

(28,350)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 395.

B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER,  
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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## UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER, C. M. SMILKER, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company, of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, towit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3544, as follows:



UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

Plaintiff,

versus

No. 1167 In Equity.

B. R. NORVELL, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants and Cross Appeal taken by the Plaintiff, to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana.

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1 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal and Gulf Refining Company of Louisiana, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General,

acting herein under the direction and by the authority of the Attorney General of the United States, bring this bill of complaint against the following defendants: B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, all citizens of the State of Texas, and residents of the City of Beaumont, in the Eastern District of said State; A. Wildenthal, a citizen of the State of Texas, and a resident of the City of Carrizo Springs, in the Eastern District of said State; and the Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, domiciled in the City of New Orleans, in the Eastern District of said State; and thereupon complains and shows unto your Honor:

### I.

That on and before December 15, 1908, the following described lands, to-wit, the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  and the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section Thirty-one (31), Township Twenty (20) North, Range Fifteen (15) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing One hundred and sixty (160) acres, were surveyed public lands and constituted a part of the public domain of the United States; and, as such, the plaintiff was on that date, and still 2 is, the owner and entitled to the possession thereof and likewise of all oil, petroleum, gas and other minerals therein contained.

### II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary

of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands as withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

### III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title,

3           lawful right or authority, the defendants herein,  
in bad faith, entered upon and took possession of  
the tract particularly described in paragraph I  
hereof, for the purpose of drilling thereon for oil and gas,  
and did so drill two wells known as Norvell Nos. One and  
Two, and did withdraw therefrom large quantities of oil  
gas the exact amount and value of which is unknown, all to  
the great and irreparable injury of plaintiff.

#### IV.

That on and prior to the dates of the withdrawal orders  
hereinabove set forth, to-wit: December 15, 1908, and July  
2, 1910, none of the said defendants, or any one from  
whom the defendants, or any of them, claim, was in the  
possession of said land, or a bona fide occupant thereof  
in diligent prosecution of work thereon leading to a dis-  
covery of oil or gas, and no such discovery was in fact  
made prior to said orders of withdrawal, nor until long  
after said orders were issued, and had become effective  
to withdraw said land from location, entry and other  
appropriation.

#### V.

Plaintiff is informed and believes that the oil and gas  
withdrawn from the said tract of land, as above set forth,  
were extracted therefrom under the color of an illegal  
mineral location made by defendants, B. R. Norvell,  
Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R.  
Millard, A. S. Denman and A. Wildenthal, represented  
by W. W. Bell, as their agent and attorney in fact, pre-  
tending to act under the place mining laws of the United  
States, which pretended location was recorded December  
24, 1908, in Book 51, page 565, of the Conveyance Records  
of Caddo Parish, Louisiana. That said pretended mineral

location embraced One Hundred and Sixty (160) acres of land, including the land herein involved, and is in words and figures as follows:

A. E. Weaver, et als  
to  
The Public.

Filed and Recorded Dec. 24, 1908.

### Notice of Mining Location.

Notice is hereby given that the undersigned, all citizens of the United States, having complied with the requirements of Chapter VI of Title 32 of the R. S. of the U. S., and the local laws, rules and regulations, and under the authority of the Act of Congress of February 11, 1897, relating to the location of lands containing petroleum, oil, or other mineral oils under placer mining claims; the undersigned constituting a mining association having located 160 acres of land described as follows, lying  
4 in Caddo Parish, State of Louisiana, being

W $\frac{1}{2}$  SE $\frac{1}{4}$  & S $\frac{1}{2}$  NE $\frac{1}{4}$ , Sec. 31, T. 20 N. R. 15 W., La.,  
containing in all 160 acres of land.

Witness our hands this 22nd day of Dec., A. D. 1908.

(Signed)

CHAS. H. STROUCK,  
A. E. WEAVER, per  
BLANCHARD,  
C. M. SMILKER,  
P. R. MILLARD,  
B. R. NORVELL,  
A. S. DENMAN,  
A. WILDENTHAL,

By W. W. BELL, agt. and attorney of  
said parties and each of them.

Attest:

L. B. WEBSTER,  
L. HANSZEN.

That the said pretended mineral locators were not in good faith, but were "dummy locators," who allowed the use of their names by W. W. Bell, at the request of one, C. H. Markham, a representative of the Gulf Refining Company of Louisiana, and for its use and benefit, for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana, a mineral location of an area of land to which it was not entitled under the law.

That the said pretended locators themselves made no effort to explore said land or drill for oil or gas thereon, but that the said oil and gas were extracted from the said land by the said Gulf Refining Company of Louisiana, under the color of some pretended claim emanating from and out of the said locators, the nature of which claim is to the plaintiff unknown.

Plaintiff shows that the said defendants have no right, title or interest in and to the said tract of land, but that the said Gulf Refining Company of Louisiana, acting under said pretended claim, hereinabove set forth, and during the month of January, 1909, after the first withdrawal order above mentioned, and subsequent to the filing and recordation of said pretended location, entered upon the property in controversy in this case, drilled wells on said land, as aforesaid, and took therefrom a large quantity of oil and gas, which it, the said Gulf Refining Company of Louisiana, has marketed and sold. That the said Gulf Refining Company of Louisiana received the price of the oil and gas so produced, marketed and sold by it, and paid out of the proceeds thereof the sum of approximately five hundred (\$500.00) Dollars to each of the said



locators hereinabove named, the exact amount so paid being to plaintiff unknown.

5       The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

Plaintiff avers that the said defendants are claiming an interest in said land, and in the proceeds of the sale of oil and gas taken therefrom under said pretended mineral location hereinabove set forth, which plaintiff alleges, is null and void, First: for the reason that the said land had been withdrawn from all forms of mineral entry prior to such pretended location, and Second: for the further reason that even if said land had been open to entry, the pretended location made by "dummy locators" was for the use and benefit of a concealed party, and was a fraud on the United States.

#### VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

#### VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Ten Thousand (\$10,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

## VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said mineral location recorded December 24, 1908, in Book 51, page 565, of the Record of Caddo Parish, Louisiana, and any and all claims of the said defendants emanating therefrom, as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be ad-

joined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

7           8. And may it further please the Court that an order be granted and entered, directed to the said defendants, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana,

who are not inhabitants of, and who are not now within, this District, and that the same be served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

#### AFFIDAVIT.

United States of America,  
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

(Seal) C. W. CALHEATT,  
Deputy Clerk, U. S. District Court,  
Northern District of California.

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## ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana, are not inhabitants of the Western District of Louisiana and are domiciled outside of said District,

It is, therefore, ordered that the said absent defendants be, and they are hereby directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15th day of Sept. at the hour of ten o'clock A. M., and that the service of a duly certified copy of the said bill of complaint and of this order be made on said defendants wherever found.

Thus done and signed, this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,  
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 2, 1917.

9 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M.  
Smilker, P. R. Millard, A. S. Denman, A. Wilden-  
thal and Gulf Refining Company of Louisiana, De-  
fendants.

The joint and several answer of all the defendants in  
the above entitled and numbered cause.

And now come all of said defendants and answer the  
bill of complaint as follows:

#### I.

The ownership by the United States, on and before De-  
cember 15th, 1908, of the South Half of the Northeast  
Quarter and the West Half of the Southeast Quarter of  
Section Thirty-one (31), township and range referred to,  
is admitted; but it is denied that plaintiff is now the  
owner thereof or entitled to the possession of said land or  
of the minerals therein contained.

#### II.

It is denied that the presidential withdrawal of De-  
cember 15th, 1908, affected the right of any duly quali-  
fied citizen to locate said property under the mining laws  
of the United States or that such order pretended to oper-  
ate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd,  
1910, (issued under authority of the act of Congress ap-

proved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location  
 10 of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal has ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

### III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the wells referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority on in bad faith or to the injury of plaintiff.

### IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the with-

drawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to, in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

# V.

It is specially denied that the mineral location referred to was illegal or a pretended one. On the contrary, defendants show that the said location was a legal and valid one, made in good faith, under the placer mining laws of the United States, upon public lands of the United States at that time open to exploration, location and purchase under such mining laws.

And defendants, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal, specially deny the allegations that they did not locate in good faith and that they were "dummy locators", who allowed the use of their names, at the request of a representative of the Gulf Refining Company of Louisiana, and for its use and benefit, or that such proceedings were had for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana a mineral location of an area of land to which it was not entitled under the law. But said defendants aver that said location was made in good faith and for their own use and benefit.

Said defendants admit that they did not by their own labor or at their own direct expense, drill on said land; but show that, as they had the right to do, they leased said property to the Gulf Refining Company of Louisiana



on the 24th day of December, 1908, as fully appears from said act of lease, which will be produced on trial hereof: and all of your defendants now show that, under and pursuant to the terms of said lease, lawfully made and entered into, said lessee proceeded in good faith to drill upon said location, commencing such drilling on the 26th day of December, 1908, and completed such effort with the discovery of oil in paying quantities on the 25th day of March, 1909, by the bringing in on said date of an oil well, thereby completing such location by a bona fide discovery.

Defendants, therefore, deny that they secured by said location no right, title or interest in and to said tract of land, and they admit that, as a result of its operations under said lease the Gulf Refining Company of Louisiana extracted and withdrew from said land seventeen thousand nine hundred and seventy-two & 76/100 (17,972.76) barrels of oil, of the market value of Thirteen Thousand Two Hundred and Sixty-one & 31/100 (\$13,261.31) Dol-

12      lars, which said lessee disposed of by the delivery to the mineral locators, or their proportion as royalty, and by the sale of the remainder at the market price, for its own account.

Defendants admit that they are claiming said land, which is, by virtue of such discovery and location, and subsequent legal assessment work, the property of said locators above named, subject to the valid mineral lease to the Gulf Refining Company of Louisiana as above set out. And they deny that said location is null and void, or that said land was withdrawn from mineral location prior to their location aforesaid or prior to discovery thereunder, or that the location was a "dummy" one or made for the use and benefit of a concealed party or that it was a fraud on the United States.

## VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

## VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

## VIII.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locators, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, seventeen thousand nine hundred and seventy-two & 76/100 (17,972.76) barrels of oil of the market value of Thirteen Thousand Two Hundred and Sixty-one & 31/100 (\$13,261.31) Dollars; of which, six thousand and fifty-one & 83/100 (6,051.83) barrels of oil of the market value of Three Thousand Five Hundred and Fifty-four & 62/100 (\$3,554.62) Dollars was delivered as royalty to the defendants, mineral locators; and the remainder, to-wit, eleven thousand nine hundred and twenty & 93/100 (11,920.93) barrels of oil of the par value of Nine Thousand Seven Hun-

dred and Six & 69/100 (\$9,706.69) Dollars, was retained by said lessee for its own use as owner—all of which it had the right to do.

### IX.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond the executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location aforesaid was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights

and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

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## X.

Defendants show that the location aforesaid was made in good faith, for the use and benefit of the said mineral locators, and not for the Gulf Refining Company of Louisiana.

But if the Court should hold that the location was made for said company, then defendants would show that said Gulf Refining Company of Louisiana is a corporation organized and chartered under the laws of the State of Louisiana and composed of more than eight persons, stockholders of said corporation, and all citizens of the United States, duly qualified to locate lands under the placer mining laws of the United States; and that said Gulf Refining Company of Louisiana, accordingly, is, under said mining laws, an association of more than eight persons and competent as such association to locate one hundred and sixty acres of land in one mineral location, and, accordingly, to have made the location here involved either in its own name or through others acting for it.

## XI.

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that said wells were drilled in good faith and under such

belief of right. And defendant, Gulf Refining Company of Louisiana, shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said well before it can be held liable, if any such liability there be, for any oil extracted therefrom. And defendant shows that the actual cost of the drilling of said well No. 1 was Twelve Thousand Nine Hundred and Eighty & 6/100 (\$12,980.06) Dollars and that the cost to defendant of the operation of said well No. 1 to July 31st, 1917, was Fourteen Thousand Three Hundred and Fifteen & 63/100 Dollars (\$14,315.63), making a total expense to this defendant in the drilling, equipping and operation of said well of Twenty-seven Thousand Two Hundred and Ninety-five & 69/100 (\$27,295.69) Dollars.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Gulf Refining Company of Louisiana may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said well and of the operation thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Gulf Refining Company of Louisiana and against the plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,  
THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed:—Answer of All Defts. Filed Sept. 29, 1917.

16 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M.  
Smilker, P. R. Millard, A. S. Denman, A. Wildenthal,  
Gulf Refining Company of Louisiana, Defendants.

# I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

# II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

## III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

## IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

## VI.

Plaintiff further shows, in the alternative, that even  
17 if the said defendants are entitled to a set off,  
or counterclaim, in any amount, which is denied,  
the sum claimed by the defendants is excessive  
and should not be allowed.

## VIII.

Wherefore plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the At-  
torney General.

Indorsed:—Plaintiff's Reply to Defendants' Set off and Counterclaim. Filed Oct. 5, 1917.

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18 (INTERROGATORIES PROPOUNDED TO B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER, C. M. SMILKER, P. R. MILLARD, A. S. DENMAN, A. WILDENTHAL AND THE GULF REFINING CO. OF LA. BY PLAINTIFF).

(1).

State how, when and under what circumstances the mineral location involved in this case was made.

(2).

State of your own knowledge whether the lines of the said mineral location were staked out on the ground, and was the land posted in any way at or prior to the time when said mineral location was made? If said lines were staked and said land posted, state who staked and posted same.

(3).

State whether or not you in person went upon the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  and the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 31, Township 20, North Range 15 West, Louisiana Meridian, Louisiana, in the Parish of Caddo, Western District of Louisiana, at any time prior to the date of said mineral location or since. If your answer is in the affirmative, then state when you went on said land.



(4).

State where you were residing at the time the said mineral location was made, and state what business you were engaged in at that time.

(5).

Is it not a fact that each of the locators who made the said mineral location, which bears the date of December 22, 1908, and is set forth in full in the bill of complaint, resided in the City of Beaumont, in the State of Texas, and is it not a fact that none of the said locators was ever on the tract of land in controversy until after the said location had been made?

19

(6).

Is it not a fact that at the date of said mineral location B. R. Norvell was the President and each of the locators was an employee of the American National Bank of Beaumont, Texas?

(7).

State who selected the land to be included in said mineral location and the circumstances under which said land was selected.

(8).

State at whose request, or at whose suggestion, the said mineral location was made.

(9).

If in answer to Interrogatory 6, you have stated that at the time said mineral location was made you were an

employee of the American National Bank of Beaumont, Texas, then say how and under what circumstances as well as at whose request or suggestion, you joined in said location as one of the locators, or permitted the use of your name as such. State fully how and why you became connected with the said mineral location?

(10).

The said mineral location, as set forth in the bill of complaint, is signed by you through W. W. Bell, Agent and Attorney. State what authority the said W. W. Bell obtained from you with reference to the making of said mineral location, and when such authority was conferred upon him.

(11).

Did you at any time before the date of said mineral location authorize the said W. W. Bell, either verbally or in writing, to make said location for you, or to sign your name thereto?

(12).

In what occupation was W. W. Bell engaged at the time said mineral location was made?

(13).

Was or was not the said W. W. Bell in the employ of the Gulf Refining Company of Louisiana at the time of said mineral location?

(14).

Is it not a fact that you made no effort to explore said land or drill thereon for oil or gas, and almost immediate-

20 ly after said location was made you leased the said property to the Gulf Refining Company of Louisiana?

(15).

In paragraph 5 of your answer to the bill of complaint, it is stated that said property was leased to the Gulf Refining Company of Louisiana on the 24th day of December, 1908. Please attach to your answers to these interrogatories a copy of said lease.

(16).

State whether or not the lease from the said locators to the Gulf Refining Company of Louisiana was recorded in the office of the Clerk and Recorder of the Parish of Caddo, Louisiana.

(17).

State whether or not it was the custom of the Gulf Refining Company of Louisiana to record leases obtained by it.

(18).

State how much money you received out of the production of oil from the said land and state the circumstances under which said money was paid.

(19).

Do you know C. H. Markham and did you know him at the time of and prior to said mineral location?

(20).

In what business was the said C. H. Markham engaged at and prior to the time of said mineral location?

.. (21).

Is it not a fact that at and prior to the time of said mineral location the said C. H. Markham was an Agent, employee, officer or representative of the Gulf Refining Company of Louisiana, or of the J. M. Guffey Company, or the J. M. Guffey Petroleum Company, a corporation domiciled, or doing business in the State of Texas.

(22).

State whether or not the said C. H. Markham made any suggestion to you of any kind relative to the making of the mineral location involved in this suit.

(23).

21 State whether or not you had any conversation with the said C. H. Markham relative to the said mineral location at, or prior to the time same was made. If so, state the substance of said conversation.

(24).

Is it not a fact that you made the said mineral location at the request or suggestion of W. W. Bell, or C. H. Markham, or both, and that they, or either of them, told you that if you would locate on the claim, they or either of them, would give you the sum of \$500.00 each for your interests therein

(25).

State how much money you and each of you received for your interests in the said mineral location, and when and how said money was paid.

(26).

Is it not a fact that after the payment to you of the amount agreed upon between you and the said C. H. Markham and W. W. Bell, either or both, you received no further royalties from the production of said oil, or that all of said production thereafter was converted to the use and benefit of the Gulf Refining Company of Louisiana?

(27).

There is attached to the interrogatories filed in the office of the Clerk of the United States District Court for the Western District of Louisiana, for service on defendant, B. R. Norvell, a copy of an affidavit purporting to have been subscribed and sworn to by the said B. R. Norvell, at Beaumont, Texas, on May 22, 1916, before D. R. Thompson, Mineral Inspector of the General Land Office. Plaintiff hereby demands and calls upon the said B. R. Norvell to admit in writing the execution and genuineness of the said affidavit, saving all just exceptions, if any, thereto.

(28).

State whether or not you, the said B. R. Norvell, executed before D. R. Thompson, Mineral Inspector of the General Land Office, on May 22, 1916, the affidavit referred to in the foregoing interrogatory, and say whether or not the statements therein contained are true and correct.

22

(29).

In the said affidavit referred to in the foregoing interrogatories, it is stated by B. R. Norvell that the said mineral location was made "by myself and seven others in the American National Bank, at the request of C. H. Markham, then at the head of the Guffey interests." State whether or not the term "Guffey interest" as used in said affidavit was meant to apply to The J. M. Guffey Company, or The J. M. Guffey Petroleum Company, or to some other Company.

(30).

Where was The J. M. Guffey Company, or the J. M. Guffey Petroleum Company domiciled and doing business, and was said Company engaged at any time, and especially at the time of making said mineral location in the production of oil in the Caddo Fields in Louisiana?

(31).

State what relations, if any, existed between the Gulf Refining Company of Louisiana and The J. M. Guffey Company, or The J. M. Guffey Petroleum Company, prior at the time of, and subsequent to, the making of said mineral location.

(32).

Is it not a fact that the mineral location involved in this case was made at the request and suggestion, and for the use and benefit of the Gulf Refining Company of Louisiana?

(33).

State what connection, if any, the Gulf Refining Company of Louisiana, or any of its Agents, representatives, or employees, had with said mineral location prior to, or at the time of, making the same, and how, and through whose agency said Company secured the lease of said land from the locators thereof.

(34).

In your answer to the bill of complaint herein, it is admitted that defendants drilled the wells in controversy. State when said wells were commenced, and when completed.

(35).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy, was \$17,972.76 barrels of the value of \$13,261.31. State whether or not the production of said well as  
23 given in your answer is exact, or estimative.

(36).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

(37).

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(38).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how and in what manner said record was kept.

(39).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(40).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the wells in suit.

(41).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.



(42).

State whether or not the Gulf Refining Company of Louisiana is engaged and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

24

(43).

What are the principal products manufactured from petroleum or crude oil?

(44).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(45).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b) the profits made by it from the manufacture and sale of the products of said crude oil.

(46).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(47).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders, participated in the profits made by the purchasing company out of said oil.

(48).

How much money was paid as royalties by the Gulf Refining Company of Louisiana, to the other defendants herein, out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalty was paid, and the amount paid to each.

25

(49).

State whether or not the Gulf Refining Company of Louisiana is still paying royalties to any of the other defendants herein.

(50).

State when the Gulf Refining Company of Louisiana began paying royalties to the other defendants herein,

and when, if at all, said Company ceased paying royalties to said other defendants.

(51).

If in answer to the foregoing interrogatories you have stated that the Gulf Refining Company of Louisiana paid royalties to the other defendants up to a certain time named in your answers and thereafter converted the entire production of said wells to its own use and benefit please state why you did not continue to pay royalties to said other defendants.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Note:—The Gulf Refining Company of Louisiana is required to answer interrogatories numbered 1, 2, 6, 7, 8, 12, 13, 15, 16, 17, 20, 21, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51.

B. R. Norvell is required to answer interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33.

Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman and A. Wildenthal are required to answer interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31, 32, 33.

Indorsed:—Application and Order to File Interrogatories and Interrogatories. Filed Feb. 20, 1918.

26      In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs.      No. 1167 In Equity.  
B. R. Norvell, et al., Defendants.

In response to and in conformity with the order made in the above numbered and entitled cause on the application of the complainant to take the testimony of B. R. Norvell, Chas. H. Stroeck, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Wildenthal and the Gulf Refining Company of Louisiana, there appeared before me at Beaumont, Texas, on this the 26th day of February, A. D. 1918, the witnesses, B. R. Norvell, Chas. H. Stroeck, A. S. Denman, P. H. Millard and C. M. Smelker, and each of said witnesses having been by me first duly sworn to tell the truth, the whole truth and nothing but the truth, in answering the interrogatories which they are requested to answer by the note attached at the end of said interrogatories, made answer to said interrogatories as follows, to-wit:

The said B. R. NORVELL being first called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

Made by myself, Chas. H. Stroeck, A. S. Denman, A. E. Weaver, C. M. Smelker, Lee Blanchette, P. H. Millard and A. Wildenthal. We appointed W. W. Bell as our attorney-in-fact to have lands surveyed and posted and make declaration of location and record same in the Records of Caddo Parish, Louisiana. The location was made on the 22nd of December, 1908. The circumstances were, as far

as I can recall, that C. H. Markham, a business and social friend of mine, told me he knew of a tract of 160 acres of land in Caddo Parish belonging to the Government which was probably oil land; that he had been advised that his Company could only locate 20 acres; that his Com-

pany was taking up oil lands in that vicinity; that  
 27 if myself and friends would locate a mining claim on the land, his Company would buy or lease it from us. After talking over the matter with him and the gentlemen who went in with me, we agreed with Mr. Markham that we would form an association and make the location, and we did so with the definite understanding that while it would be our claim and our land if we secured title we would sell it or lease it to Mr. Markham's Company. We then went ahead and had Mr. Bell to locate the claim.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge the facts as to the land being staked on ground or land posted, as I entrusted all of this to my attorney-in-fact, W. W. Bell.

To Interrogatory Number Three said Witness answered:

I did not.

To Interrogatory Number Four, said Witness answered:

Beaumont, Texas. Banking principally.

To Interrogatory Number Five, said Witness answered:

All resided in Beaumont. I cannot say whether any of locators were on land before location was made; I was not.

To Interrogatory Number Six said Witness answered:

Yes.

To Interrogatory Number Seven said Witness answered:

I have answered this in my answer to the first interrogatory.

To Interrogatory Number Eight said Witness answered:

I have fully answered this in my answer to interrogatory number one.

28 To Interrogatory Number Nine said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

W. W. Bell was appointed attorney-in-fact by me by written power of attorney dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

My recollection is that W. W. Bell was informed verbally or by 'phone that he had been appointed attorney-in-fact by myself and the other mineral locators.

To Interrogatory Number Twelve, said Witness answered:

Leasing and land agent for the Gulf Refining Company of Louisiana.

To Interrogatory Number Thirteen said Witness answered:

He was.

To Interrogatory Number Fourteen said Witness answered:

Yes. Having leased it, I could not operate it myself.

To Interrogatory Number Eighteen said Witness answered:

I received proceeds of oil to the amount of \$500.00. The circumstances were that the Company, our lessee, drilled wells, produced oil and accounted to us for our royalty, as we had agreed in the lease and contract.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

General Manager at Beaumont of the Gulf Refining Company of Louisiana and of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes.

29 To Interrogatory Number Twenty-two said Witness answered:

He told me, as detailed in my answer to interrogatory number one, of the land and its location, etc., and as there detailed suggested the formation of the mining association.

To Interrogatory Number Twenty-three said Witness answered:

Yes, I did, and have stated in my answer to interrogatory number one the substance of same.

To Interrogatory Number Twenty-four said Witness answered:

As stated, myself and associates made the location on information furnished by Mr. Markham and agreed to sell his Company the land, or lease it to his Company, under the circumstances stated in my answer to interrogatory number one. We further agreed to sell it and make transfer when we had received from the proceeds of oil produced from the land \$4,000.00, and this would be \$500.00 each. We afterwards leased the land to Markham's Company, but it was always with the understanding



that we were to receive no royalties after our royalties reached the sum of \$4,000.00.

To Interrogatory Number Twenty-five said Witness answered:

\$500.00 by checks of the company.

To Interrogatory Number Twenty-six said Witness answered:

We only received \$500.00 each. What was done by the Company I don't know.

To Interrogatory Number Twenty-seven said Witness answered:

I admit the execution of the affidavit.

To Interrogatory Number Twenty-eight said Witness answered:

I did, and the statements are true but they are explained by my answer to other interrogatories, as I could not go into details in a short affidavit.

30 To Interrogatory Number Twenty-nine said Witness answered:

The J. M. Guffey Petroleum Company, commonly spoken of as the J. M. Guffey Company.

To Interrogatory Number Thirty, said Witness answered:

At Beaumont, Texas. According to my information it was not.

To Interrogatory Number Thirty-one said Witness answered:

I don't know, except I knew Mr. Markham was acting for both Companies as far as I knew.

To Interrogatory Number Thirty-two said Witness answered:

No, I don't think it is a fact. It was made by me and my associates because we thought we could make a little money out of it. It was made at the suggestion of Mr. Markham in a sense; that is, he told me about the land and that I could form an association and his Company would buy or lease the land.

To Interrogatory Number Thirty-Three said Witness answered:

I think I have fully answered this interrogatory in my answer to interrogatory number one. Mr. Markham secured the lease for his Company.

B. R. NORVELL.

Sworn to and subscribed before me, under my official hand and seal, this the 26th day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,  
Notary Public in and for Jefferson County, Texas.

State of Texas,  
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness, B. R. Norvell, were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by  
31 said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

(Seal) L. M. CHAUVIN,  
Notary Public, Jefferson  
County, Texas.

The said CHAS. H. STROECK being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

In December, 1908, Mr. B. R. Norvell informed me that he knew of a tract of 160 acres of land near Shreveport that belonged to the United States Government; that under the law a mining association could be formed and locate the land; that Mr. Markham of the Gulf Company told him about the land and agreed if there was an association formed and the land located his Company would lease or buy the land, and if it proved to be oil land would pay the association royalties to the amount of \$4,000.00. I agreed to and did go into the association and we located the land through Mr. W. W. Bell, as our Agent.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge whether the lines of said mineral location were staked on the ground, nor that the land was posted in any way prior to or at the time when the location was made.

To Interrogatory Number Three, said Witness answered:

I did not.

To Interrogatory Number Four said Witness answered:

Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

32        It is a fact that they all resided in Beaumont, Texas. I do not know of my own knowledge whether any of them were on the land or not. I was not.

To Interrogatory Number Six said Witness answered:

It is a fact.

To Interrogatory Number Seven said Witness answered:

W. W. Bell, as our agent and attorney-in-fact, according to my belief. I have stated the circumstances in my answer to interrogatory number one.

To Interrogatory Number Eight said Witness answered:

I have answered this fully in my answer to interrogatory number one.

To Interrogatory Number Nine said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

W. W. Bell was appointed attorney-in-fact by myself and associates by written power of attorney dated December 21st, A. D. 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, in writing as above stated.

To Interrogatory Number Twelve said Witness answered:

My understanding is he was an employee of the Gulf Refining Company of Louisiana engaged in the land Department.

To Interrogatory Number Thirteen said Witness answered:

I think so.

To Interrogatory Number Fourteen said Witness answered:

Yes, it is a fact.

To Interrogatory Number Eighteen said Witness answered:

I received \$500.00 from the proceeds of the sale of the oil by checks of the Company.

33 To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

General Manager of the Gulf Refining Company of Louisiana, and also of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes.

To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-three said Witness answered:

I had no conversation.

To Interrogatory Number Twenty-four said Witness answered:

It isn't a fact that the mineral location was made at the request or suggestion of either Mr. Bell or Mr. Markham so far as I know. As stated, all of my conversations were with Mr. B. R. Norvell.

To Interrogatory Number Twenty-five said Witness answered:

I received \$500.00 by checks of the Company at various times in payment of royalty interest sold.

To Interrogatory Number Twenty-six said Witness answered:

Is it a fact that after I received checks amounting to \$500.00 my claim was fully satisfied, and I don't know what the Company did with regard to the oil after that.

To Interrogatory Number Thirty said Witness answered:

The J. M. Guffey Petroleum Company is domiciled at Beaumont, Texas, and according to my information that Company was not engaged in producing oil in the Caddo fields.

34 To Interrogatory Number Thirty-one said Witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

I have stated all I know about the matter in my answer to interrogatory number one. I went into it because I saw an opportunity to make a little money.

To Interrogatory Number Thirty-three said Witness answered:

I have stated all I know in regard to the matter in answer to Interrogatory number one. I did join in the execution of a lease to the Gulf Refining Company of Louisiana, leasing the land to that Company.

CHAS. H. STROECK.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,  
Notary Public in and for Jefferson County, Texas.

State of Texas,  
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness Chas. F. Stroeck were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,  
Notary Public, Jefferson County, Texas.



The said A. S. DENMAN being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

In December, 1908, Mr. B. R. Norvell informed me that he knew of a tract of 160 acres of land near Shreveport that belonged to the States Government; that under the law a mining association could be formed and locate the land; that Mr. Markham of the Gulf Company told him about the land and agreed if there was an association formed and the land located his Company would lease or buy the land, and if it proved to be oil land would pay the association royalties to the amount of \$4,000.00. I agreed to and did go into the association and we located the land through Mr. W. W. Bell as our Agent.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge of the facts inquired about in this Interrogatory.

To Interrogatory Number Three said Witness answered:

I never did.

To Interrogatory Number Four said Witness answered:

In Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

Yes. They all resided in Beaumont, Texas, and so far as I know none of them were on the land prior to the location. I was not.

To Interrogatory Number Six said Witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said Witness answered:

I have stated in answer to Interrogatory Number one all I knew about this. I do know that W. W. Bell was appointed attorney-in-fact by all of us to make the location.

To Interrogatory Number Eight said Witness answered:

I have stated in answer to interrogatory number one all I know about this. Mr. Norvell was the only man who said anything to me about it.

To Interrogatory Number Nine said Witness answered:

I became one of the locators on the suggestion of Mr. B. R. Norvell, and did so as I was told I would  
36            make a little money out of it.

To Interrogatory Number Ten said Witness answered:

All of the locators, including myself, signed a written power of attorney to W. W. Bell, the instrument being dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, by power of attorney dated December 21st, 1908, and as above stated.

To Interrogatory Number Twelve said Witness answered:

He was what is called a "scout" with the Gulf Refining Company of Louisiana and in the Land Department.

To Interrogatory Number Thirteen said Witness answered:

I think so.

To Interrogatory Number Fourteen said Witness answered:

It is a fact.

To Interrogatory Number Eighteen said Witness answered:

I received checks at various times to the amount of \$500.00 as the proceeds of part of the oil produced.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

Vice-President and General Manager of the Gulf Refining Company, of Louisiana, the J. M. Guffey Company and the Gulf Pipe Line Company according to my information and belief.

To Interrogatory Number Twenty-one said Witness answered:

Yes, it is a fact.

37. To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-three said Witness answered:

I did not.

To Interrogatory Number Twenty-four said Witness answered:

It isn't a fact. Neither of the parties mentioned in this interrogatory ever spoke to me about the matter.

To Interrogatory Number Twenty-five said Witness answered:

I received checks at various times aggregating \$500.00. I do not recall the dates when I received same.

To Interrogatory Number Twenty-six said Witness answered:

As stated, I only received checks aggregating \$500.00. As to what was done with the oil produced after that, I have no knowledge.

To Interrogatory Number Thirty said Witness answered:

The J. M. Guffey Petroleum Company was located in Beaumont at the time, and as far as I know was not doing business in the Caddo fields.

To Interrogatory Number Thirty-one said Witness answered:

I have no knowledge of any relations between the Companies.

To Interrogatory Number Thirty-two said Witness answered:

So far as I am concerned, it was not. I have answered as to the circumstances in interrogatory number one.

To Interrogatory Number Thirty-three said Witness answered:

As before stated, Mr. W. W. Bell, was an employee of the Company and he located the land. As stated, Mr. Norvell told me that Mr. Markham stated that his Company would lease the land, and after the location was  
38 made I joined in the Lease to the Company.

A. S. DENMAN.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,

Notary Public in and for Jefferson County, Texas.

State of Texas,  
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness A. S. Denman were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,  
Notary Public, Jefferson  
County, Texas.

(Seal)

The said P. H. MILLARD being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

My recollection about the matter is that sometime in December, 1908, Mr. B. R. Norvell came to me in the Bank and told me that Mr. Markham had told him about a tract of land of about 160 acres somewhere near Shreveport which belonged to the Government, and could be located under mining claims; that Mr. Markham had said that if he, Mr. Norvell and his friends would get up a mining association and locate the land that his Company would buy or lease the land, and Mr. Norvell stated I think that Mr. Markham would pay \$4,000.00 out of the production of oil if we found oil on the land. I agreed with Mr. Norvell to go into the matter with the understanding that I would get one-eighth of what the association got out of it. We appointed Mr. W. W. Bell as our attorney-in-fact to make the location for us.

To Interrogatory Number Two said Witness answered:

I don't know of my own knowledge whether the lines of said mineral location was staked on the ground or the land posted. All this was entrusted to Mr. Bell. Mr. Lee Blanchette went on the land, but I don't remember exactly on what date.

To Interrogatory Number Three said Witness answered:

I did not.

To Interrogatory Number Four said Witness answered:

Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

All of the locators did reside in Beaumont, Texas. I cannot say whether any of them were ever on the land, except myself. I was not.

To Interrogatory Number Six said Witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Eight said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Nine said Witness answered:

I have fully answered this in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

40 All of the locators, including myself, signed a written power of attorney to W. W. Bell, the instrument being dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, by power of attorney as above stated.

To Interrogatory Number Twelve said Witness answered:

According to my information Mr. Bell was an employee of the Gulf Refining Company of Louisiana, in the land Department, leasing lands.

To Interrogatory Number Thirteen said Witness answered:

I think he was.

To Interrogatory Number Fourteen said Witness answered:

Yes, it is a fact that we made no effort to explore the land because we leased it to the Gulf Refining Company as we had agreed to do.



To Interrogatory Number Eighteen said Witness answered:

According to my recollection, I received checks at various times in certain sums as the proceeds of my royalty interest, amounting in all to \$500.00.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

Manager of the Gulf Refining Company of Louisiana and of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes, it is a fact.

To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-Three said Witness answered:

I did not.

To Interrogatory Number Twenty-four said Witness answered:

As before stated, I had no conversation whatever with C. H. Markham in regard to the matter, and neither he nor Mr. Bell ever told me they would pay me  
41 \$500.00 for my interest.

To Interrogatory Number Twenty-five said Witness answered:

As before stated, I received checks at various times which aggregated \$500.00 as the proceeds of royalty coming to me under our contract.

To Interrogatory Number Twenty-six said Witness answered:

As before stated, I received from the Company checks aggregating \$500.00. What the Company did with any production after that I don't know.

To Interrogatory Number Thirty said Witness answered:

My understanding is that J. M. Guffey Petroleum Company operated only in Texas.

To Interrogatory Number Thirty-one said witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

I have stated in my answer to interrogatory number one all I knew about the formation of the association, and as far as I am concerned it was made because I expected to make some little money out of it.

To Interrogatory Number Thirty-three said Witness answered:

I think I have fully answered this interrogatory in my answer to interrogatory number one. I have stated there all I know about the matter.

P. H. MILLARD.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public in and for  
Jefferson County, Texas.

42      State of Texas,  
          County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness P. H. Millard were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public, Jefferson  
County Texas.

The said C. M. SMELKER being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said witness answered:

In December 1908 Mr. Norvell came to me and said that he had been told by Mr. Markham of a tract of land near Shreveport of 160 acres which belonged to the United States Government and that it might be oil land, and that if Mr. Norvell would get up a mining association and locate on this land, that Mr. Markham's company would lease or buy it from us. He asked me if I wanted to go into the association and I told him I would be glad to if there was any chance of making anything out of it, and he said that we would make about \$500.00 a piece, and so I went ahead with Mr. Norvell and the others and we formed a mining association and gave Mr. W. W. Bell a power of attorney to locate the land for us, and then we made a lease to Mr. Markham's company as agreed upon.

To Interrogatory Number Two said witness answered:

I don't know of my own knowledge whether this was done or not. We entrusted it all to Mr. Bell, our attorney-in-fact.

To Interrogatory Number Three said witness answered:

I did not.

To Interrogatory Number Four said witness answered:

In Beaumont. In the banking business.

43 To Interrogatory Number Five said witness answered:

Yes; I cannot speak for the others, but I was never on the land before the location was made.

To Interrogatory Number Six said witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said witness answered:

I have fully answered this interrogatory to the best of my ability in my answer to interrogatory number one.

To Interrogatory Number Eight said witness answered:

I have stated in answer to interrogatory number one that it was at the request and suggestion of Mr. Norvell that I went into the association to make the locations.

To Interrogatory Number Nine said witness answered:

I have fully answered this interrogatory in my answer to Interrogatory number one.

To Interrogatory Number Ten said witness answered:

We all made a power of attorney to W. W. Bell, dated December 21st, 1908.

To Interrogatory Number Eleven said witness answered:

Yes, as stated in the power of attorney above mentioned.

To Interrogatory Number Twelve said witness answered:

Mr. Bell was employed by the Gulf Refining Company of Louisiana as land agent.

To Interrogatory Number Thirteen said witness answered:

Yes, he was.

To Interrogatory Number Fourteen said witness answered:

Yes, it is a fact.

44 To Interrogatory Number Eighteen said witness answered:

I received \$500.00 in checks at various times from the Gulf Refining Company of Louisiana in payment of royalty for oil sold.

To Interrogatory Number Nineteen said witness answered:

Yes.

To Interrogatory Number Twenty said witness answered:

He was General Manager of the Gulf Refining Company of Louisiana.

To Interrogatory Number Twenty-one said witness answered:

As stated, my understanding is that he was the General Manager of the Gulf Refining Company of Louisiana.

To Interrogatory Number Twenty-two said witness answered:

He did not.

To Interrogatory Number Twenty-three said witness answered:

I did not.

To Interrogatory Number Twenty-four said witness answered:

As stated, I had no conversation with Mr. Markham, and neither he nor Mr. Bell ever informed me that they would pay me \$500.00 for my interest in the location.

To Interrogatory Number Twenty-five said witness answered:

As stated, I received \$500.00 in checks at various times from the Gulf Refining Company of Louisiana. I do not recall the dates on which these checks were paid.

To Interrogatory Number Twenty-six said witness answered:

As stated, I never had any agreement with C. H. Markham or W. W. Bell, about paying me \$500.00 or any other sum. I was paid \$500.00 as stated under our contract with the Gulf Refining Company of Louisiana, and what the Company did with the production after I was paid this amount I don't know.

45 To Interrogatory Number Thirty said Witness answered:

At Beaumont, Texas. I don't know that the J. M. Guffey Petroleum Company was ever engaged in producing oil in the Caddo fields.

To Interrogatory Number Thirty-one said Witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

As far as I am concerned, it was made for my own benefit as I have stated in answer to interrogatory number one the circumstances under which I went into the mining association.

To Interrogatory Number Thirty-three said Witness answered:

I have stated in my answer to interrogatory Number One all I know in regard to the matters inquired about in this interrogatory. I do know that I joined Mr. Norvell and the others in the lease contract to the Gulf Refining Company of Louisiana, but I did not talk with Mr. Markham or any of the representatives of the Gulf Refining Company.

C. M. SMELKER.

Sworn to and subscribed before me, under my official hand and seal, this the 26th day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public in and for  
Jefferson County, Texas.



State of Texas,  
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness C. M. Smelker were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,  
Notary Public, Jefferson  
County, Texas.

(Seal)

46           Indorsed :—Depositions of B. R. Norvell,  
Chas. H. Stroeck, A. S. Denman, P. H. Millard  
and C. M. Smelker. Filed Feb. 27, 1918.

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47           In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs.                   No. 1167, In Equity.  
B. R. Norvell, et al., Defendants.

In response to the order made in the above numbered and entitled cause on the application of the Complainant to take the testimony of B. R. Norvell, Charles H. Stroeck, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana, D. Edward Greer appeared before me on this date as an officer or employe of the Gulf Refining Company of Louisiana to make answers to some of the interrogatories propounded as to which it is noted that

the proper officer or employe of the Gulf Refining Company of Louisiana, who has knowledge of the facts inquired about, shall make answer thereto; and Harry C. Hanszen appeared to make answer to such of the interrogatories as are not answered by said Greer; and said witnesses, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, said GREER makes answer to Interrogatories Nos. (1), (2), (6), (7), (8), (12), (13), (15), (16), (17), (20), (21), (30), (31), (32) and (33) as follows:

As to Interrogatory No. (1) witness answers:

With the exception of F. C. Proctor, General Counsel of the Gulf Refining Company of Louisiana, and Harry C. Hanszen, I am the only employe of the Company at this time having any knowledge of the matter inquired about, who was an employe in December, 1908, in December, 1908, I resided in Beaumont, Texas, and was General Attorney for the Gulf Refining Company of Louisiana. Mr. F. C. Proctor was General Counsel of the Company; Mr. C. H. Markham, now president of the Illinois Central Railway Company, was the General Manager of the Company, both of the last named gentlemen residing at Beaumont, Texas. Harry C. Hanszen became the General Agent of the Gulf Refining Company of Louisiana in the early spring of 1909, and thereafter resided in Shreveport, Louisiana, until about December, 1909. W. W. Bell, was an employe of  
 48 the Gulf Refining Company, of Louisiana, and was at that time engaged in buying lands and securing leases in Caddo Parish and in Northern Louisiana generally. About the middle of December, 1908, there was considerable excitement because of the discovery of some large oil wells in the vicinity of Mooringsport, Louisiana, and there was a great rush, (as is

usual in such cases) by oil operators to buy land or secure leases on the same. Miss Lydia Hanszen, who also resided in Beaumont, was Mr. Markham's assistant in the Manager's office.

I do not recall how the Company became advised of the fact that the land in controversy in this case belonged to the Government, but I do recall that I was requested to go to Shreveport and make investigation with a view to determining whether said land really did belong to the Government; and, if so, to ascertain whether or not a valid mining location on the same, or title thereto, could be procured by my company. In making such investigation I found that the land had been covered by applications to purchase under the timber and stone acts of Congress by various parties resident in and around Shreveport; and also that there had been some attempted homestead entries; that such applications had never been finally passed on by the local land office at Natchitoches; and I advised Mr. Markham that I believed that such applications would be finally rejected if protests were filed by mineral locators under the placer mining laws of the United States, setting up that the lands were chiefly valuable for minerals. I further advised Mr. Markham that in my opinion the Company could take up under the placer mining laws only twenty acres in one body, but that it was the opinion of some reputable lawyers that a corporation having more than eight stockholders would be deemed and considered as a mining association, and as such could take up one hundred and sixty acres. I was at Shreveport at this time, and remained there until after the mineral location was made and filed by H. R. Norvell and his associates, and hence I do not know what took place between Mr. Norvell and Mr. Markham, or between Mr. Norvell's

49 associates and Mr. Markham. I do know that Mr. Markham asked my opinion as to whether employes of the Gulf Refining Company of Louisiana could form a mining association, make location on the land, and then transfer the same or lease it to the Gulf Refining Company of Louisiana. I advised him that they could not, unless the corporation could itself do so as having more than eight stockholders, and being thus considered a legal mining association. I recall that I advised; Mr. Markham not to attempt to have employes of the Company make the mineral location. I further advised him (in connection with Mr. F. C. Proctor) that in my opinion there was no legal reason why he should not give to his friends and business associates the information that there was a tract of 160 acres of land, which was possibly oil land, belonging to the United States Government, near development in Caddo Parish; and that he could tell such friends and associates that he would give them a description of the land and all necessary information for them to make a mineral location; and would lease the land from them on behalf of the Company and proceed at once to do the necessary development work to make the claim valid under the United States placer mining laws.

The next thing I heard of the matter was that powers of attorney, executed by all the defendants in this suit except the Gulf Refining Company of Louisiana, to W. W. Bell, were set up to Sheveport, all properly executed, appointing said Bell as the agent and attorney in fact for the mining association formed by said parties to make a mineral location on the land in controversy under the placer mining laws of the United States. Acting under this Mr. Bell did have the land surveyed and staked out, executed the proper notices, and had the same filed in the records of Caddo Parish. This was on the 22nd of

December, 1908. During all the time that this was going on Mr. Proctor was at Beaumont, and he and I were in communication by wire and over the 'phone, and both he and I advised Mr. Markham that it must be distinctly understood that the Gulf Refining Company of Louisiana was not acquiring this mineral location or claim to the land, but that B. R. Norvell and his associates, in the

50 mining association were acquiring such claim and title, and that the only interest which the Gulf Refining Company of Louisiana could have or should seek to get would be by contract with these mineral locators. It was my understanding with Mr. Markham that this was what should be done, and was done. In carrying out this arrangement there was executed between the Gulf Refining Company of Louisiana and B. R. Norvell and his associates the following instrument, to-wit:

"The State of Texas,  
Jefferson County.

This contract made and entered unto on this day by and between Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. M. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, constituting a mining association under articles of agreement this day signed by each of us, and hereinafter called party of the first part, and the Gulf Refining Company of Louisiana, a corporation chartered under the laws of Louisiana, hereinafter called party of the second part, witnesseth: That,

Whereas, the party of the first part has this day located, under the placer mining laws of the United States, 160 acres of land in Caddo Parish, State of Louisiana, known and described as the West half of the

Southeast quarter, and the South half of the Northeast quarter, of Section 31 Township 20 North Range 15 West, Louisiana meridian; and

Whereas, party of the first part has not, as yet, discovered minerals in paying quantities on said land; and desires that exploration be made at once thereon, and a well drilled for the purpose of endeavoring to discover petroleum oil on said land; and the party of the second part is a corporation, organized for the purpose, among other things, of drilling wells and producing petroleum oil, and has and maintains an organization and all the materials, implements and tools necessary and appropriate for the purpose of conducting such explorations and drilling wells under advantageous circumstances:

Now, this contract and agreement made between the parties herefo, witnesseth:

1. That the party of the first part hereby consents and agrees that the party of the second part shall go on said land, and take possession thereof, and immediately commence the drilling of a well on some portion of said land, and prosecute such drilling with proper and reasonable diligence to the discovery of oil or abandonment of the attempt, it being understood that if oil is not discovered in the first well drilled, that the second party shall have the right and privilege of drilling as many wells as it pleases and to continue the explorations on said land until satisfied that oil can not be produced therefrom. That the second party shall stand all expenses of every kind and character, in conducting such operations.

2. That if oil is discovered in paying quantities on said land, the party of the second part shall be entitled,

and shall receive, on demand, a conveyance from the party of the first part, conveying said land to it, and all right, title and interest of every kind and character, whether such mineral is discovered before said land is patented, or not; and, after such conveyance is made, if the same shall have been made before said land is patented by the United States Government, then such patent shall issue to the party of the second part as assignee, if it is so desired, and if not, to the party of the first part, said party of the first part agreeing, in such contingency, to make a second deed after said patent shall have issued.

3. If oil is discovered in paying quantities on said land, and title is secured from the United States Government thereto, the party of the second part shall pay to the party of the first part the proceeds of one-half of the oil first produced from said land, taken at its market price on the land, until such proceeds shall amount to the sum of Four Thousand (\$4,000.00) Dollars; and, if the conveyance herein contemplated to be made by the party of the first part to the party of the second part, is made prior to the payment of such consideration, to-wit: the proceeds of one-half of the oil until it amounts to \$4,000.00, then such conveyance shall recite as a consideration, the agreement on the part of the party of the second part to pay such consideration.

4. It is understood between the parties hereto, that it will require a large outlay of moneys to make the explorations on said land, and test the same so as to determine whether the same contains petroleum oil in paying quantities, or not, and that the undertaking on the part of the party of the second part to expend such



moneys and undergo such expense in said one well, is a good and valid consideration to the party of the first part for the making of this contract.

Thus, done, read and signed, this the 22nd day of December, A. D. 1908.

(Signed) B. R. NORVELL,  
 (Signed) LEE BLANCHETTE,  
 (Signed) PH. H. MILLARD,  
 (Signed) A. E. WEAVER,  
 (Signed) A. S. DENMAN,  
 (Signed) C. M. SMELKER,  
 (Signed) A. WILDENTHAL,  
 (Signed) CHAS. H. STROECK.  
 GULF REFINING COMPANY  
 OF LOUISIANA,

By (Signed) C. H. MARKHAM,  
 Vice President.

The State of Texas,  
 County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson in the State of Texas, and in the presence of R. R. Zierlein and W. H. Land, competent witnesses, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, all persons of full age, and each declared to me that he executed the said foregoing instrument for the purposes and consideration therein expressed, and that his signature to said instrument is genuine.



Thus done, read and signed by the said Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, in the presence of the said R. R. Zierlein and W. H. Land, competent witnesses, and me, Notary Public as aforesaid, on this the 30 day of December, A. D. 1908.

	(Signed)	CHAR. H. STROECK,
52	(Signed)	A. E. WEAVER,
	(Signed)	A. WILDENTHAL,
	(Signed)	C. M. SMELKER,
(Seal)	(Signed)	P. H. MILLARD,
	(Signed)	B. R. NORVELL,
	(Signed)	LEE BLANCHETTE,
	(Signed)	A. S. DENMAN.

Witness:

(Signed)	R. R. ZIERLEIN,
(Signed)	W. H. LAND.
(Signed)	E. CAMPBELL,

Notary Public in and for  
Jefferson County, Texas.

The State of Texas,  
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified, in and for the County of Jefferson in the State of Texas, and in the presence of Robt. Chisolm and J. A. O'Brien, competent witnesses, on this day personally appeared C. H. Markham, a person of full age, who declared that he is the Vice-President of the Gulf Refining Company of Louisiana, and that he

executed the said foregoing instrument in his capacity as Vice President, for the purposes and consideration therein expressed, and as the act and deed of said Gulf Refining Company of Louisiana, and that his signature to said instrument is genuine.

Thus done, read and signed by the said C. H. Markham, as Vice-President of the said Gulf Refining Company of Louisiana, in the presence of the said Robt. Chisolm and J. A. O'Brien, competent witnesses, and me, Notary Public as aforesaid, on this the 30th day of December, A. D. 1908.

(Signed) C. H. MARKHAM,  
Vice President Gulf Refining  
Company of Louisiana.

(Signed) E. CAMPBELL,  
Notary Public in and for  
Jefferson County, Texas.

Witnesses:

(Signed) ROBT. CHISOLM,

(Signed) J. A. O'BRIEN.

State of Texas,  
Jefferson County.

Know all men by these presents: That we, Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, all citizens of the United States and residents of Jefferson County, Texas, do hereby form ourselves into a mining association, for the purpose of taking up placer mining claims in Caddo Parish, State of Louisiana, for the development of petroleum oil and gas, and to that end do constitute ourselves a mining association.

In testimony of all of which witness our hands this the 22nd day of December, A. D. 1908.

53 (Signed) CHAS. H. STROECK,  
 (Signed) A. E. WEAVER,  
 (Signed) A. WILDENTHAL,  
 (Signed) LEE BLANCHETTE,  
 (Signed) P. H. MILLARD,  
 (Signed) B. R. NORVELL,  
 (Signed) A. S. DENMAN,  
 (Signed) C. M. SMELKER.

Witnesses:

(Signed) R. R. ZIERLEIN,  
 (Signed) W. H. LAND.

State of Texas,  
 County of Jefferson.

Before me, E. Campbell, a Notary Public in and for Jefferson County, Texas, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30 day of December A. D. 1908.

(Signed) E. CAMPBELL,  
 (Seal) Notary Public in and for  
 Jefferson County, Texas.

For some reason, unknown to me, and probably under the advice of Mr. F. C. Proctor, a second instrument was

executed on the 24th day of December, 1908, by and between said B. R. Norvell and his associates and the Gulf Refining Company of Louisiana, a copy of which is as follows: -

"The State of Texas,  
Jefferson County.

This contract made and entered into on this the 24th day of December, 1908, by and between Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, who have constituted themselves into a mining association, under articles of agreement duly signed by them, herein after called parties of the first part, and the Gulf Refining Company of Louisiana, a corporation chartered under the laws of the State of Louisiana, hereinafter called the party of the first part.

Witnesseth: That

Whereas, the parties of the first part, as a mining association have located, under the placer mining laws of the United States, the South half of the Northeast quarter, and the west half of the Southeast quarter of Section 31 Township 20 North, Range 15 West, Louisiana Meridian, for the purpose of producing therefrom petroleum oil and gas, and of taking possession of said land, having surveyed out the boundaries thereof, and fully complied with the Statutes of the United States in such cases made and provided; and

Whereas, the party of the second part is a corporation, engaged in the business of mining for and producing and handling petroleum oil, and is well equipped for such purposes:

Now, this Agreement Witnesseth:

54           1. That for and in consideration of One Dollar to the parties of the first part paid, and the covenants and agreements of the party of the second part herein contained, the parties of the first part have, and do hereby lease, demise and let unto the party of the second part the said land, for the purpose of exploration and production of petroleum oil and gas therefrom; and to that end they give and grant to the party of the second part full right of possession in and to land, with the right to erect all necessary buildings, tanks and machinery of every kind, and to lay pipe lines for the conduct of water, oil and gas, in, upon and through said land. The party of the second part agrees to commence the drilling of a well on said premises within sixty days from the date hereof, and to prosecute such drilling with due diligence to a sufficient depth to develop petroleum oil therefrom, in any strata known to exist in said field, and to fully equip said well with all necessary machinery to successfully and properly operate the same for the production of oil.

2. Party of the second part further agrees, that from the oil produced from said land, it will pay, render and deliver to the parties of the first part an equal one-tenth, (1/10) thereof, into the tanks or pipe lines with which the wells on said land may be connected.

3. It is further agreed that this lease shall run for a period of ten years from the date hereof, and so long thereafter as oil or gas may be produced in paying quantities from said lands by party of the second part.

4. It is further agreed, that as the party of the second part is fully equipped with experienced men, that all

questions as to how many wells shall be drilled on said land, and when and where the same shall be drilled, and to what depth, or how the same shall be drilled and operated, are left to the good judgment and business management of the party of the second part.

Thus done, read and signed by Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses.

(Signed) CHARLES H. STROECK,  
 (Signed) A. E. WEAVER,  
 (Signed) LEE BLANCHETTE,  
 (Signed) C. M. SMELKER,  
 (Signed) P. H. MILLARD,  
 (Signed) A. S. DENMAN,  
 (Signed) A. WILDENTHAL,  
 (Signed) B. R. NORVELL.

Witnesses:

(Signed) W. E. WRATHER,  
 J. A. O'BRIEN.

And also executed by said Gulf Refining Company of Louisiana, by its Vice President, C. H. Markham.

GULF REFINING COMPANY  
 OF LOUISIANA,

By (Signed) C. H. MARKHAM,  
 Vice President.

Witnesses:

(Signed) W. E. WRATHER,  
 (Signed) J. A. O'BRIEN.

The State of Texas,  
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson, in the State of Texas, and in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, all persons of full age, and each declared to me that he executed the said foregoing instrument for the purposes and consideration

therein expressed, and that his signature to said  
55 instrument is genuine.

Thus done, read and signed by the said Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, in the presence of the said W. E. Wrather and J. A. O'Brien, competent witnesses, and me, notary public as aforesaid, on this the 16 day of January, A. D. 1909.

(Signed) B. R. NORVELL,  
(Signed) A. WILDENTHAL,  
(Signed) A. E. WEAVER,  
(Signed) C. M. SMELKER,  
(Signed) P. H. MILLARD,  
(Signed) A. S. DENMAN,  
(Signed) CHAS. H. STROECK,  
(Signed) LEE BLANCHETTE.

(Signed) E. CAMPBELL,  
Notary Public in and for Jefferson County, Texas.

Witnesses:

(Signed) W. E. WRATHER,  
(Signed) J. A. O'BRIEN.

The State of Texas,  
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson in the State of Texas, and in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses, on this day personally appeared C. H. Markham, a person of full age, who declared that he is the Vice President of the Gulf Refining Company of Louisiana, and that he executed the said foregoing instrument in his capacity as Vice President, for the purposes and consideration therein expressed and as the act and deed of said Gulf Refining Company of Louisiana, and that his signature to said instrument is genuine.

Thus done, read and signed by the said C. H. Markham, as Vice President of the said Gulf Refining Company of Louisiana, in the presence of the said W. E. Wrather and J. A. O'Brien, competent witnesses and me, Notary Public as aforesaid, on this the 16 day of January, A. D. 1909.

(Signed) C. H. MARKHAM,

Vice President Gulf Refining Company of Louisiana.

(Signed) E. CAMPBELL,

(Seal) Notary Public in and for  
Jefferson County, Texas.

Witnesses:

(Signed) W. E. WRATHER,  
J. A. O'BRIEN.

My impression is that Mr. Proctor and I discussed the matter and both he and I had some doubt as to whether the mineral locators could make a binding contract to sell the mineral location prior to the discovery of minerals,



but neither of us had any doubt about the power of the locators to execute a common mineral lease for the purpose of securing development; and we, therefore, advised Mr. Markham to take from the mineral locators such a lease, and accordingly the second instrument

56       above copied, was executed. Immediately after this mineral location was filed, it became evident that the parties having the stone and timber files in the Land Office and the Homestead entries, were going to make trouble about securing possession of the land, and with considerable difficulty and expense my company did take possession of the land, and, notwithstanding threats of violence from various quarters, maintained such possession and proceeded at once to get the necessary machinery and materials on the ground, and began drilling a well early in January, 1909. In the meantime we employed counsel at Natchitoches (Judge Carver) and lawyers at Shreveport, filed protests in the Land Office, and followed this up with hearings before the Commissioner; and after a lengthy and expensive litigation succeeded, by the actual discovery of minerals before the hearing, in proving that lands were mineral lands, and procured the rejection of these stone and timber and homestead entry claims by the Land Department. In doing all this we had to fight several injunction suits, both in the state and Federal Courts, by these claimants; and it is very evident now that this energetic prosecution of the mineral file and the resisting of the stone and timber applications for purchase and homestead entries in the local Land Office at Natchitoches, preserved the land to the United States; without this effort and expenditure of large sums of money, no doubt the land would have been awarded and patented to these applicants. A few days before the matter of the formation of the mining association by Mr. Norvell and his associates, I learned of the withdrawal or

der of December 15, 1908, made by the Secretary of the Interior under direction of the President, and investigated to the best of my ability the question of the validity of such order. I came to the conclusion that the Executive Department did not have the legal authority to make the withdrawal order, and so advised Mr. Markham. Mr. Proctor gave the same opinion, and I think I can truthfully say that such was practically the unanimous opinion of the lawyers at Shreveport and Natchitoches. A lawyer at Washington, D. C., when we consulted him gave the same advice.

57           Certainly the Company made the agreement with Norvell and his associates and expended its money in drilling the wells and operating generally under the advice of its lawyers that the withdrawal order was ineffectual. From the fact that four of the nine judges of the Supreme Court, in deciding the Midwest Oil Company case, agreed with us in this opinion, it would seem that there was considerable room for doubt about it, to say the least.

To the Interrogatory No. (2) this witness answers:

I do not know of my own knowledge whether the lines of said mineral location were staked out on the ground, or that the land was posted in any way, at or prior to the time when the location was made. I do know that I saw the field notes of the surveyor who claimed to have made such location on the ground and staked the same out under the superintendence of Mr. Bell.

To the Interrogatory No. (6) witness answers:

It is a fact that B. R. Norvell was the President of the American National Bank of Beaumont, Texas, at the date of the mineral location. I do not think that all of the locators were employes of the Bank, but I think most of them were.

To the Interrogatory No. (7) witness answers:

See answer to Interrogatory No. (1) for full answer to this interrogatory.

To Interrogatory No. (8) witness says:

See my answer to Interrogatory No. (1) for answer to this question in full, so far as the witness can answer the same.

In answer to Interrogatory No. (12) witness states:

As stated in my answer to Interrogatory No. (1), W. W. Bell, was an employee of the Gulf Refining Company of Louisiana at the time the location was made, and was engaged in taking up leases and in buying lands for said Company.

58 In answer to Interrogatory No. (13) witness says:

I have answered this in my answer to Interrogatory No. (12).

In answer to Interrogatory No. (15) witness says:

I have included copy of the lease in my answer to Interrogatory No. (1), to which I now refer.

To Interrogatory No. (16) witness answers:

It was not.

To Interrogatory No. (17) witness answers:

Speaking generally, it was the custom of the Company to record its leases, but by no means all of its leases were recorded. The reason why this lease was not recorded was that there seemed at that time to be a violent prejudice in that part of Caddo Parish against big oil companies (as the larger operators were called), and threats of violence against their employes if they attempted to take up

any of the Government lands; and we thought we might as well avoid publicity as much as we could.

In answer to Interrogatory No. (20) witness says:

As I have stated in my answer to Interrogatory No. (1) C. H. Markham was at the time of the mineral location the General Manager of the Gulf Refining Company of Louisiana, and had been for several years.

In answer to Interrogatory No. (21) witness states:

Yes, it is a fact that at and prior to the time of said mineral location C. H. Markham was an agent and employe and an officer and representative of the Gulf Refining Company of Louisiana. He was Vice-President and General Manager of the same; he occupied a similar position with the J. M. Guffey Petroleum Company, a Texas corporation; there was no such concern then as the J. M. Guffey Company.

59 In answer to Interrogatory No. (30) witness says:

As before stated, there was no such concern as the J. M. Guffey Company in existence at the time the mineral location in question was made. The J. M. Guffey Petroleum Company at such time was domiciled at Beaumont, Texas, and engaged in the production of oil in Texas, but was not engaged in the production of oil in Caddo Parish, Louisiana.

In answer to Interrogatory No. (31) witness states:

The only relation which existed between the J. M. Guffey Petroleum Company and the Gulf Refining Company of Louisiana, prior to and at the time of and subsequent to the making of the mineral location in question, was that the stockholders of the two corporations, were largely the same, and they had many officers in common.

In answer to Interrogatory No. (32) witness says:

I have set out in full detail in my answer to Interrogatory No. (1) the facts and circumstances surrounding the mineral location involved in this case. My opinion is that the mineral location involved in this case was made at the suggestion of C. H. Markham, as before explained, but that it was not made for the use and benefit of the Gulf Refining Company of Louisiana, but was made by the locators for their own use and benefit on information given to them by Mr. Markham of the existence and location of the land, with an understanding that on account of his having given such information to them the locators would give to the Gulf Refining Company of Louisiana a lease on the land in preference to giving such lease to some other person or corporation.

In answer to Interrogatory No. (33) witness says:

I have stated in detail in my answer to Interrogatory No. (1) all of the facts within my knowledge relative to the connection of any and all the agents of the Gulf Refining Company of Louisiana with the mineral location in question. The lease was acquired by Mr. C. H. Markham from the mineral locators at Beaumont, Texas, as previously stated.

60      Witness further states that he has no knowledge of the matters inquired about in the other interrogatories which the officers or the agents of the Gulf Refining Company of Louisiana are required to answer.

D. EDWARD GREER.

Sworn to and subscribed before me, under my official hand and seal, this the 27th day of February, A. D. 1918.

M. SAUNDERS,

(Seal)

Notary Public in and for Harris County, Texas.

State of Texas,  
County of Harris.

I, M. Saunders, do hereby certify that the above and foregoing answers of the witness D. Edward Greer were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness, before me.

Witness my hand and seal of office, this the 27th day of February, A. D. 1918.

M. SAUNDERS,  
(Seal) Notary Public in and for Harris County, Texas.

Witness HARRY C. HANSZEN, as an agent and employee of the Gulf Refining Company of Louisiana, appeared and made answer to Interrogatories Nos. 34 to 51, both inclusive, as follows, to-wit:

To Interrogatory No. (34) said witness answers:

Two wells were drilled on the land in controversy, as follows: Norvell No. 1, commenced December 26, 1908, completed March 25, 1909, No. 2, commenced January 8, 1909, completed March 28, 1909.

To Interrogatory No. (35) said witness answers:

In stating in the original answer the amount  
61 of production and the value of the same a slight error was made; this error was occasioned by the fact that a man by the name of Edwards had a claim on a part of the land in controversy which I understood to be an application for purchase under the Stone and Timber Act, and one of the wells was drilled on this tract. The Accounting department kept the production of this well as from the Edwards Tract, and there was produced from

this well, up to July 31, 1917, a total of 1717.53 barrels, and this was not included in the 17,972.76 barrels stated in the answer as being the total production. The total production is, therefore, 17,972.76 plus the production from the Edwards well of 1717.53, making a total of 19,690.29 barrels, as of July 31, 1917; the value of this total being \$14,152.07. The above statement of the production is not estimated, but is exact according to our books.

To Interrogatory No. (36) witness answers:

The total production up to July 31, 1917, was 19,690.29 barrels, and from July 31, 1917, to January 1st, 1918, 206.29 barrels.

To Interrogatory No. (37) witness answers:

The wells on the property in controversy were operated separately from any and all other wells operated by the Company.

To Interrogatory No. (38) witness answers:

Yes, a separate and complete record was kept by the Company of the oil produced from the wells on the land. Record of this production was kept in the usual way, as follows: the oil was pumped into settling tanks on the lease, a daily production gauge being taken at 7 A. M. and a record kept thereof. Deliveries were made from these tanks into pipe lines, careful gauge being taken of each delivery and run ticket issued. Tank tables were computed by competent tank gauge engineer, and the

Accounting Department of the Gulf Refining

63 Company of Louisiana computed the runs from run tickets and tank tables, and an accurate record was kept as to the exact amount of oil delivered into pipe lines.

To Interrogatory No. (39) witness answers:

As stated in answer to previous interrogatories, the amount of production was not estimated, and the production was not in connection with any wells on lands not in suit.

To Interrogatory No. (40) witness answers:

Mr. L. E. Delcuze, Auditor of the Company, has given me all the information from the books of the Company. His address is Gulf Building, Houston, Texas.

To Interrogatory No. (41) witness answers:

The total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy is \$14,561.81. This value is exact and not approximate. The value is based on the field market prices at the time of production.

To Interrogatory No. (42) witness answers:

The Gulf Refining Company of Louisiana was engaged in the production and sale of oil, but not in the manufacture of oil. The oil produced from the land in question was sold by the Gulf Refining Company of Louisiana in its crude state and not manufactured by it.

To Interrogatory No. (43) witness answers:

As far as I know the principal products manufactured from petroleum are gasoline, kerosene, naphtha, lubricating oils, fuel oils, and in some cases paraffine wax.

To Interrogatory No. (44) witness answers:

Gulf Refining Company of Louisiana manufactured no products from the oil extracted from the land in controversy.



To Interrogatory No. (45) witness answers:

63 The Gulf Refining Company of Louisiana made no profits whatever either from the sale of the crude oil extracted from the land in controversy or from the manufacture and sale of the products of said crude oil. The Company did not manufacture the crude oil into refined products, but sold the oil in its crude state.

In drilling the wells and operating the same on the land in controversy the Gulf Refining Company of Louisiana expended the sum of \$44,203.46. It produced from the land in question a total of 19,896.58 barrels. The entire gross proceeds of the sale of all this oil amounted to the sum of \$16,115.46. The gross proceeds of the sale of oil as above stated included the expense of pipage and delivery. The market value of the oil in the field was \$14,561.81, and the pipage and delivery expense was \$1,553.65. The Company also paid B. R. Norvell, Chas. H. Stroeck, Lee Blanchette, A. E. Weaver, C. W. Smelker, Paul H. Milard and A. S. Denman the sum of \$4,000.00 as proceeds of their royalty oil. The net proceeds received by the Gulf Refining Company of Louisiana from the sale of the oil produced from said land was \$10,561.81, and since the Company had expended in drilling and operating the sum of \$44,203.46 and paid out for royalties the sum of \$4,000.00, it has a net loss of \$33,641.65.

To Interrogatory No. (46) witness answers:

That all the oil produced by the Gulf Refining Company of Louisiana from the land in controversy was sold to the Gulf Pipe Line Company, delivery being made either into tank cars or into pipe lines of that Company.

To Interrogatory No. (47) witness answers:

(a) All the oil was sold to the Gulf Pipe Line Company.

(a) I have answered this in my answer to Interrogatory No. 45.

64 (c) I have answered this in my answer to Interrogatory No. 46.

(d) So far as I know the only relation which existed between the Gulf Refining Company of Louisiana and the Gulf Pipe Line Company, the purchaser of said oil was that they had a number of stockholders and officers in common.

(e) I cannot answer this question except to state that so far as stockholders of Gulf Refining Company of Louisiana and Gulf Pipe Line Company were common, the stockholders of the former company no doubt participated in the profits, if any, made on the sale of the oil by the Gulf Pipe Line Company.

To Interrogatory No. (48) witness answers:

The Gulf Refining Company of Louisiana made the following payments as royalty from oil produced from the land in controversy: B. R. Norvell, \$500.00; Chas. H. Stroeck, \$500.00; Lee Blanchette, \$500.00; A. E. Weaver, \$500.00; C. W. Smelker, \$500.00; Paul H. Millard, \$500.00; A. S. Denman, \$1,000.00. A. Wildenthal was not paid any royalty because he transferred all of his right to royalty payments to A. S. Denman, and the share which would have gone to him was paid by the Company to said Denman.

To Interrogatory No. (49) witness answers:

It is not.

To Interrogatory No. (50) witness answers:

The first payment of royalties made by Gulf Refining Company of Louisiana to the other defendants was March 1st, 1911, and the last payment was made May 6, 1914.

To Interrogatory No. (51) witness answers:

The reason why the Gulf Refining Company of Louisiana ceased paying royalties to the other defendants in this suit was because it had fulfilled its contract with them and paid to them the amount of royalties contracted to be paid to them.

65

HARRY C. HANSZEN,  
Agent Gulf Refining Company  
of Louisiana.

Sworn to and subscribed before me, under my official hand and seal, this the 28th day of February, A. D. 1918.

(Seal) M. SAUNDERS.

State of Texas,  
County of Harris.

I, M. Saunders, do hereby certify that the above and foregoing answers of the witness Harry C. Hanszen were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by the said witness before me.

Witness my hand and seal of office, this the 28th day of February, A. D. 1918.

M. SAUNDERS,  
(Seal) Notary Public in and for  
Harris County, Texas.

Indorsed: Deposition of B. R. Norvell, et al. Filed  
Mar. 2, 1918.

66 In the District Court of the United States for  
the Western District of the State of Louisiana.

United States of America,  
vs. No. 1167, In Equity.  
B. R. Norvell, et al.

State of Texas,  
County of Dimmit.

Be it remembered, that before me, W. N. Terry, Clerk of the District Court in and for Dimmit County, Texas, on this day personally appeared A. Wildenthal, who after first being by me duly sworn, made the following as his answers to the attached Interrogatories in the above entitled and numbered cause, to-wit:

To Interrogatory No. 1, witness answers:

As near as I can now remember, sometime during the latter part of the year 1908, Messrs. B. R. Norvell, A. E. Weaver, C. H. Stroeck, P. H. Millard, A. S. Denman, C. M. Smelker and myself, all then of Beaumont, Texas, associated ourselves for the purpose of making some class of mineral or mining locations, and at said time if my recollection is clear, we signed a power of attorney authorizing a Mr. W. W. Bell to act for us in making locations. This was something over nine years ago while I was about twenty four years of age, working in the American National Bank of Beaumont, Texas, and the circumstances as near as I can refresh my memory regarding same, is that one morning at about ten or eleven o'clock, the date I cannot recall, but it was during the latter part of the year 1908, the above named associates mentioned were in the President's office of said Bank and I believe it was either Mr. Norvell or Mr. Stroeck called me to join

them in the proposition; and I being young and inexperienced in business organizations, and Mr. Norvell and Stroeck being my employers in said bank, I having every confidence in them, joined in such association in good faith.

To Interrogatory No. 2, witness answers:

I do not know how any surveys or land marks were established or staked, having never been within the State of Louisiana, and left the whole proposition up to Mr. Norvell and the other more experienced business members of the association and the said agent of their selection.

To Interrogatory No. 3, witness answers:

No, I have never been upon the land mentioned, nor have I ever been in the State of Louisiana.

To Interrogatory No. 4, witness answers:

I was then residing in the City of Beaumont, Texas, and employed as Collector & Exchange Teller in the American National Bank of said City.

To Interrogatory No. 5, witness answers:

Yes, each of the members of said association were residing in the city of Beaumont, Texas, and personally I was never upon said tract, but do not know whether or not any of the other members were.

To Interrogatory No. 6, witness answers:

Yes.

To Interrogatory No. 7, witness answers:

I believe Mr. Bell made the location for said members of the association.

To Interrogatory No. 8, witness answers:

This I do not know of my own knowledge, for as stated, I was then unfamiliar with business organizations and relied upon Mr. Norvell and the other more experienced members managing same.

67 To Interrogatory No. 9, witness answers:

As stated in my answer to Inty. No. 1, it was either at Mr. Norvell's or Mr. Stroeck's suggestion, and knowing them to be successful business men and connected with the proposition and also being an employee under them and believing the undertaking to be a straight proposition, I consented to join with them in the association.

To Interrogatory No. 10, witness answers:

As stated in one of my previous answers, at about the time we associated ourselves, we signed some sort of an authority or power of attorney authorizing Mr. Bell to act for us.

To Interrogatory No. 11, witness answers:

The only time I can recall is at the instance when we associated ourselves as set out in my previous answers and as stated in the answer next above, we signed a power of attorney authorizing Mr. Bell to act for us.

To Interrogatory No. 12, witness answers:

I did not personally know Mr. Bell nor do I know what his occupation was; the selection of him was made by some of the more experienced members of the association, and through my confidence in Mr. Norvell's and Mr. Stroeck's judgment I consented to signing the power of attorney.

To Interrogatory No. 13, witness answers:

I do not know.

To Interrogatory No. 14, witness answers:

As near as I can now recall, we, the members of said association, signed some sort of a paper, which I understood to either be a transfer or lease contract in favor of the Gulf Refining Company. Not being familiar with such class of documents and knowing that the more experienced members of the Bank had also signed the same class of document, and not being inclined to be contrary, I also signed same.

To Interrogatory No. 18, witness answers:

I have never received any proceeds from oil from said land. As near as I can now recall, a number of months subsequent to signing the above mentioned transfer or lease to the Gulf Refining Company, I resigned my position with the American National Bank, and a few days before leaving the employ of said Bank, I transferred all of my interests or equities in said association to Mr. A. S. Denman, one of the other members as hereinabove listed, and as consideration for same said Denman conveyed to me a lot or parcel of town property in the town of Cotulla, Texas, of an approximate value of, as near as I can now recall, of about \$50.00. If any money was received from the production of oil from said land it may have probably been received by my said assignee Mr. A. S. Denman, as I personally have never received any sum whatever from such productions.

To Interrogatory No. 19, witness answers:

No, I was not personally acquainted with Mr. Markham, I only knew him by sight.

To Interrogatory No. 20, witness answers:

I do not know what business Mr. Markham was engaged in. I always supposed him to be a lawyer.

To Interrogatory No. 21, witness answers:

As stated in the next above answer, I do not know with whom he was engaged, have never been personally acquainted with him, but have often seen him visiting the officers of said Bank and presumed that he was a lawyer.

To Interrogatory No. 22, witness answers:

I do not remember of Mr. Markham ever making any suggestion to me at all with regard to such location nor regarding any other business transaction.

To Interrogatory No. 23, witness answers:

No.

To Interrogatory No. 24, witness answers:

No, such is not a fact. As stated in my previous answers, I joined in such association through the suggestion of either Mr. Norvell or Mr. Stroeck, as near as I can now remember. I did not know anything about any \$500. payment until after I had signed the conveyance or lease contract to the Gulf Refining Company, I heard some of the boys in the Bank, who were members of the association, discussing the signing of same and it was then I learned that we would at some time receive \$500. for our interests or share therein.

To Interrogatory No. 25, witness answers:

As stated in my answer No. 18, I have never received any money for my interests in said location, having traded my equities off to Mr. Denman for the town lot mentioned.

To Interrogatory No. 26, witness answers:

As stated in my answer to Inty. No. 25 and No. 18, I traded my interests off to Mr. Denman and have never



claimed nor received any moneys from the Gulf Refining Company nor any one else for royalties nor do I know anything regarding any such productions of oils from said land nor do I know of any benefits derived by the Gulf Refining Company or any one else from oils or productions from the land mentioned. Since I traded off my interests to Mr. Denman I heard nothing further from the proposition and it had almost escaped my memory until I was served with the process in this suit and read same over carefully and have been trying ever since to refresh my memory as to what transpired at the time we associated ourselves. The dates of the signing of the power of attorney and lease contract to the Gulf Refining Company having escaped my memory entirely, and not having received any moneys or other things from productions, I traded same off as stated and paid no further attention to the matter.

To Interrogatory No. 27, witness answers:

I do not know anything at all regarding this affidavit.

To Interrogatory No. 28, witness answers:

My answer to Inty. No. 27, covers this.

To Interrogatory No. 29, witness answers:

My answer to Inty. No. 27, covers this.

To Interrogatory No. 30, witness answers:

I do not know.

To Interrogatory No. 31, witness answers:

I do not know.

To Interrogatory No. 32, witness answers:

The Gulf Refining Company never made any suggestion to me regarding the mineral location, and as stated in

previous answers, the matter was suggested to me either by Mr. Norvell or Mr. Stroeck when we so associated ourselves.

To Interrogatory No. 33, witness answers:

I do not know what connection, if any said Gulf Refining Co. or its agents, representatives or employees had with such mineral location. As stated in my previous answers, I only knew Mr. Norvell, Mr. Stroeck and the other members of our association in the premises, and as to the making of the mentioned lease contract, all that I can now recall is that same was brought to the Bank by some one, whom I do not know or now recall, and knowing that Mr. Norvell, Mr. Stroeck and other members of such association were signing same, I also joined in the transaction.

A. WILDENTHAL.

The State of Texas,  
County of Dimmit.

The foregoing answers to the attached Interrogatories were subscribed and sworn to before me by A. Wildenthal, who upon his oath states that same are true and correct to the best of his knowledge and belief. This February 26th, 1918.

Given under my hand and seal of office this the 26th day of February, A. D. 1918.

W. N. TERRY,

(Seal)

Clerk of the District Court  
in and for Dimmit County,  
State of Texas.

Indorsed: Answer of A. Wildenthal to Interrogatories to him propounded. Filed Apr. 20, 1918.

B.

70 United States District Court, Western District  
of Louisiana.

United States,

vs.

No. 1167.

R. B. Norvell, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,  
(Seal) Judge.

March 29, 1918.

Filed Mar. 29, 1918.

71 United States District Court for Western District of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1167.

B. R. Norvell, et al.

Evidence taken before the Honorable E. H. Randolph, Special Master in the above cause, on June 11th, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

#### Appearances.

Hon. R. A. Hunter, appeared on behalf of the Government.

Messrs. Thigpen & Herold, appeared for Defendants.

It is admitted by Counsel for Defendants that the property in controversy herein, was at the time of the location herein involved the property of the United States Government and still remained the property of the Federal Government, unless the location in question is a valid one.

Counsel for Plaintiff offered in Evidence application and order to file Interrogatories, addressed to B. R. Norvell, Charles H. Steouck, Lee Blanchey, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Winglen-thal and the Gulf Refining Company of Louisiana, together with the answers of said defendants and of D. Edward Greer and Harry C. Hansen, on behalf of the Gulf Refining Company of Louisiana, together with the exhibits at-

tached to said answers, said interrogatories and answers thereto being now on file.

Counsel for Plaintiff also offers in Evidence affidavits executed by H. R. Norvell, before D. R. Thompson, Mineral Inspector, together with written demand upon said Norvell to admit or deny the execution of said affidavits and the written statement of said Norvell, admitting the execution thereof, said documents being already on file.

72 JAMES W. NEAL, a witness for the Plaintiff, being first duly sworn testified as follows:—

On Direct Examination he said:—

By Mr. Hester:—

Q. Are you a Special Agent for the General Land Office?

A. I am.

Q. State whether or not, in your official capacity you made an examination of the records of the Gulf Refining Company of Louisiana to ascertain the quantity and value of oil produced by it from the land in suit?

A. I did.

Q. What data was your investigation based upon?

A. Based upon the books of the Gulf Refining Company of Louisiana and the run tickets of the pipe line Company, of the oil run.

Q. Where was your investigation made?

A. Houston, Texas.

Q. Have you prepared a statement showing the result of your examination of the books and records of the Gulf Refining Company of Louisiana?

A. I have.

Q. Please state what that statement shows?

A. The statement shows that there was run from the Norvell oil Wells Nos. 1 & 2 from March 1909 to December 31st, 1917, 19,896.58 barrels of oil of the value of \$14,561.81. The division of the oil and value was made in a lump sum to the different royalty claimants, B. R. Norvell receiving \$500.00, or the value of 863.83 barrels of oil; C. H. Stoenck received \$500.00 or the value of 863.83 barrels of oil; Lee Blanchett received \$500.00 or the value of 863.83 barrels of oil; A. E. Weaver received \$500.00 or the value of 863.83 barrels of the oil; C. M. Smelker received \$500.00 or the value of 863.83 barrels of the oil; P. H. Millard received \$500.00 as value of 863.83 barrels of oil; A. S. Denman received \$1,000.00 as the value of 1727.64 barrels of oil; the total paid in royalties or under contract by the Gulf Refining Company of Louisiana was \$4,000. The total value of the oil retained by the Gulf Refining Company of Louisiana as its part of the value of the oil run from the wells is \$10,561.81 or the value of 12,985.98 barrels of oil; the pipe line earnings of the Company on the oil run was \$1553.66 making the total received by the Company \$12,115.47, for its part of the oil sold from the wells.

Q. The Gulf Refining Company of Louisiana, produced all of the oil from the land did it not?

A. Yes, sir.

Q. Did your investigation show when the wells were drilled?

A. Yes, sir. Well Number one was begun December 26th, 1908. That is the date they put up the derrick, and they began to drill the well January 5th, 1909, and completed the well on March 25th, 1909. Well Number two was begun on January 8th, 1909 and completed March 28th, 1909.

Q. Those lands were drilled on the land in suit, were they not?

A. They were.

Q. I hand you statement marked Plaintiff "A" and referring to that statement so far as it relates to the production, value and division of the oil and ask you to say whether it is correct or not and was made from the books of the Gulf Refining Company of Louisiana?

A. The statement is correct and was made from the books of the Gulf Refining Company of Louisiana.

Counsel for Plaintiff offers the statement identified by the witness marked "A" in evidence, in so far as it relates to the production, value and division of the oil in question.

Filed in Evidence and marked exhibit "A".

On Cross Examination he said:—

By Mr. Herold:—

Q. Mr. Neal on your statement you have "Total pipe Line earnings on oil run \$1,553.66" what does that represent?

A. That represents the earning of the Pipe Line Company for running the oil from the land in question to the Company's receiving tanks on the Texas line. It was my understanding from the records and statements of the bookkeeper of the Gulf Refining Company of Louisiana, that they considered the oil at one price on the land and add to that price the pipe line earning, which gives the value of the oil in the receiving tanks of the Company on the Texas line.

74 Q. The sum of \$10,561.81 then represents the value of the oil in the tanks on the property itself, and

then you would add the item pipe line earnings \$1,553.66, which represents the carriage charges from the property in dispute to the tanks of the Gulf Refining Company on the Texas State line?

A. It does.

Q. You have no information as to the cost to the Company of handling that oil?

A. No, sir.

Q. Mr. Neal, in making your investigation in this case, in your official capacity, did you examine into the cost of drilling, equipping and operating these wells?

A. I did.

Q. From such examination, can you state what it cost the Gulf Refining Company of Louisiana to drill, equip and operate the wells up to December 31st, 1917?

A. Yes, sir. The cost of drilling, equipping and operating the wells to December 31st, 1917, was \$27,998.10.

Q. The cost of drilling, equipping and operating well No. 2 up to the time that it ceased production of oil was what?

A. \$13,526.40.

Q. Making the total cost of drilling, equipping and operating this property what?

A. \$41,524.50.

Q. These wells began to produce oil on the date mentioned as the day of completion of the respective wells?

A. They did.

Counsel for defendant offers the statement referred to in evidence, being the statement heretofore offered by Plaintiff and marked "A."

Q. In your examination of this case Mr. Neal, did you investigate at all into the corporation and organization of the Gulf Refining Company of Louisiana, with a view



75 of determining the number of stockholders in that Company in 1908?

A. No, sir.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, did you ascertain when Well No. 2 was drilled?

A. That is shown on the statement there.

Q. It shows on the statement that it was commenced January 8th, 1909?

A. Yes, sir.

Plaintiff's Rest.

Defendant reserves the right to take depositions of J. L. Jones and ...

I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken in the above numbered and entitled cause.

R. B. COOK,

Stenographer.

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Suit No. 1167.

United States vs. B. R. Norvell, et al.

Statement of Oil Run from Norvell Nos. 1 and 2 from March, 1909, to December 31, 1917, Divisions of Oil and Values.

	Barrels	Value
Total oil run from wells Norvell		
Nos. 1 and 2 to December 31,		
1917 .....	19,896.58	\$14,561.81

## Division of Oil and Value.

B. R. Norvell .....	863.83	500.00
C. H. Stoeck .....	863.83	500.00
Lee Blanchett .....	863.83	500.00
A. E. Weaver .....	863.83	500.00
C. M. Smelker .....	863.83	500.00
P. H. Millard .....	863.83	500.00
A. S. Denman .....	1727.64	1,000.00

Total paid in royalty or under contract .....		\$4,000.00
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Total oil and value retained by the Gulf Refining Co. of La. ....	12,985.98	\$10,561.81
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Total Pipe Line Earnings on oil run .....		1,553.66
Total .....		\$12,115.47

Cost of drilling, equipping and operating No. 1 to December 31, 1917 .....	\$27,998.10	
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Cost of drilling, equipping and operating No. 2 to July, 1909, when well ceased to produce oil .....	\$13,526.40	\$41,524.50
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Commenced drilling No. 1 December 26, 1908, and completed same March 25, 1909.

Commenced drilling No. 2 January 8, 1909, and completed same March 28, 1909.

No. 1167. Plff. "A." R. B. Cook, Stenographer.

77 Gulf Refining Company of Louisiana.  
Caddo Parish.

Statement showing Pipe Line Runs from Norvell No. 1  
from March, 1909, through December, 1917.

Year	Barrels	Price	Amount
1909			
March	21.00	40c.	8.40
April	913.57	45	411.11
May	494.18	50	247.09
June	718.88	55	395.38
July	663.16	55	364.74
August	548.90	55	301.90
September	356.68	60	214.00
October	519.79	60	311.87
November	342.33	60	205.40
December	186.00	60	111.60
	<hr/>		<hr/>
	4,764.49		2,571.49

1910			
January	311.08	60	186.65
February	320.06	60	192.04
March	317.92	60	190.75
April	164.85	60	98.91
May	146.28	40	58.52
June	311.37	40	124.55
July	326.44	38	124.05
August	340.21	40	136.08
September	180.97	40	72.39
October	170.91	40	68.36
November	165.35	40	66.14
December	182.10	42	76.48
	<hr/>		<hr/>
	2,937.54		1,394.92

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## 1911

January	224.91	44	98.96
February	138.45	44	60.92
March	228.30	50	114.15
April	163.12	50	81.56
May	180.05	55	99.03
June	171.04	60	102.62
July	232.00	60	139.20
August	174.69	60	104.81
September	180.85	62	112.13
October	157.19	62	97.46
November	162.20	62	100.56
December	158.22	62	98.10

2,171.02

1,209.50

## 1912

January	168.48	69	116.25
February	169.57	72	122.09
March	164.10	72	118.15
April	139.03	75	104.27
May	163.43	77	125.84
June	166.79	77	128.43
July	150.19	80	120.15
August	166.37	80	133.10
September	139.23	80	111.38
78 October	165.05	80	132.04
November	111.91	83	92.89
December	173.04	91	157.47

1,877.19

1,462.06

## 1913

January	151.47	93c.	140.87
February	152.65	98	149.60

# 107

March	165.96	98	162.64
April	156.74	98	153.61
May	165.44	98	162.13
June	135.31	98	132.60
July	136.29	1.00	136.29
August	146.63	1.05	153.96
September	97.00	1.05	101.85
October	138.90	1.05	145.85
November	144.90	1.05	152.15
December	145.97	1.05	153.27

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1,737.26

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1,744.82

## 1914

January	152.97	1.05	160.62
February	128.66	1.05	135.09
March	151.80	1.05	159.39
April	136.51	1.05	143.34
May	105.35	1.05	110.62
June	110.92	1.05	116.47
July	121.18	1.00	121.18
August	130.29	85	110.75
September	118.33	80	94.66
October	126.43	80	101.14
November	118.70	80	94.96
December	107.16	80	85.73

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1,508.30

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1,433.95

## 1915

January	126.39	80	101.11
February			
March	202.43	70-60	130.42
April	94.69	60	57.45
May	107.56	60	64.54

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June	101.09	60	60.65
July	113.61	60	68.17
August	102.22	65	66.44
September	98.78	75	74.09
October	103.17	80	82.54
November	100.13	1.00	100.13
December	93.33	1.20	112.00
	<hr/> 1,243.40		<hr/> 917.54

1916

January	99.20	1.30	128.96
February	85.42	1.30	111.05
March	82.69	1.45	119.90
April	117.47	1.55	182.08
May	65.10	1.55	100.91
June	102.28	1.55	158.53
July	99.27	1.55-1.45	150.97
August	96.86	1.14-95-80	97.47
September	93.94	.90	84.55
October	92.03	90	82.83
November	92.93	90	83.64
December	102.55	1.00-1.20-1.40	122.24
	<hr/> 1,129.74		<hr/> 1,423.13

79 1917

January	101.28	1.60-1.70	168.67
February	85.13	1.70	144.72
March	61.62	1.80-1.90	114.51
April	101.81	1.90	193.44
May	105.16	1.90	199.80
June	66.95	1.90	127.21
July	81.87	1.90	155.55
August	28.43	1.90	54.02

August	54.67	2.00	109.34
September	91.66	2.00	183.32
October	31.53	2.00	63.06
November	....	....	....
December	....	....	....
	<hr/> 810.11		<hr/> 1,513.64

Grand Total	18,179.05	\$13,671.05
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Pipage Earnings on 7,002.70		
bbls. at 5c. per bbl. ....		350.14
Pipage Earnings on 11,176.35		
bbls. at 10c. per bbl. ...		1,117.64
		<hr/> \$15,138.83

Statement Showing Cost of Drilling and Equipping and  
Operating Norvell No. 1 Caddo Parish, Louisiana,  
to December 31, 1917.

Commenced drilling December 26, 1908	Completed
March 25, 1909.	

#### Expenditure.

Drilling and equipping Well No. 1	12,980.06	
Operating expense to December 31,		
1917 .....	15,018.04	
	<hr/>	
Total Outlay .....		27,998.10

## Oil Production.

18,179.05 Bbls. at various prices, plus pipage earnings .....	15,138.83	15,138.83
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Balance to pay out Decem- ber 31, 1917 .....		\$12,859.27
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Total Pipe Line Runs Divided and Paid for as Follows:

	Barrels	Value
B. R. Norvell .....	756.48	444.33
C. H. Stoeck .....	756.48	444.33
Lee Blanchette .....	756.48	444.33
A. E. Weaver .....	756.48	444.33
C. M. Smelker .....	756.48	444.33
P. H. Millard .....	756.48	444.33
A. S. Denman .....	1,512.95	888.64
Gulf Refg. Co. of La. ....	12,127.22	10,116.43
	<u>18,179.05</u>	<u>13,671.05</u>

4 April 17 1918 5.

80 Gulf Refining Company of Louisiana.

Statement Showing Total Production from Norvell Well  
No. 2 Caddo Parish, Louisiana.

1909	Barrels	Price	Amount
April	583.30	50	291.65
May	494.18	50	247.09
June	485.37	55	266.95
July	154.68	55	85.07
	<u>1,717.53</u>		<u>\$890.76</u>



Plus Pipage Earnings on 1717.53	
Bbls. at 5c. per bbl. ....	85.88
	<hr/>
	\$976.64

Cost of Drilling and Equipping		
No. 2 .....	11,069.62	
Operating Expense .....	2,456.78	
Total Outlay .....		13,526.40
		<hr/>
Balance paid out .....		12,549.76

Divided and Paid for as Follows:

	Barrels	Amount
B. R. Norvell .....	107.35	55.67
Chas. H. Stroeck .....	107.35	55.67
Lee Blanchette .....	107.35	55.67
A. E. Weaver .....	107.35	55.67
C. M. Smelker .....	107.34	55.67
Paul H. Millard .....	107.34	55.67
A. S. Denman .....	214.69	111.36
G. R. Co. of La. ....	858.76	445.38
	<hr/>	<hr/>
	1,717.53	890.76

Commenced Drilling January 8, 1909. Completed  
March 28, 1909.

4, March 21, 1918, 5.

Plaintiff A. Filed Jan. 21, 1919.  
B.

81 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,

vs. No. 1167, in Equity.

B. R. Norvell, et al., Defendant.

To B. R. Norvell, a Resident of the City of Beaumont, in  
the Eastern District of Texas.

In accordance with Rule 58 of the Equity Rules, plaintiff hereby calls upon you to admit in writing, within five days after service hereof, the execution of a certain affidavit sworn to and subscribed by you before D. R. Thompson, a Mineral Inspector of the General Land Office, on May 22, 1916, at Beaumont, Texas, a copy of which affidavit is hereto annexed and made by reference a part of this demand.

This February 15th, 1918.

ROBERT A. HUNTER,

Special Assistant to the Attorney  
General, Attorney for Plaintiff.

Service accepted, this Feb. 16th, 1918.

THIGPEN & HEROLD,

Solicitors for Defts.

Copy.

State of Texas,

County of .....

B. H. NORVELL, a citizen, deposes and says:

My residence and post office address are Beaumont, Texas. I am president of the American National Bank of Beaumont.

Q. Are you one of eight locators who made a location of 160 acres in the Caddo oil field, known as the Norvell tract?

A. Yes.

Q. What were the circumstances of the filing of this location, and how was it made?

A. It was made by myself and seven others in the American National Bank at the request of C. H. Bachman, then at the head of the Gulfley interests.

Q. Do you recall what Mr. Bachman said?

A. He told me that if we would locate on the claim he would give us \$500.00 each, for the claim.

Q. Did he carry out this agreement?

A. Yes, and the papers were executed. Each of us received \$500.00.

Q. Did you ever claim the claim?

A. Yes.

Q. Were you there at the time of location?

A. No.

Q. Were any of the other locators present at the time of location that you know of.

A. No, sir.

Q. You never received any royalty from the sale of oil?

A. Yes, that is the way we received our money. The \$500. was paid monthly as the oil was produced. The locators received  $\frac{1}{4}$  of the production until each had re-

113

ceived \$500. The dates between which the royalties were paid were March, 1911, to May, 1914.

Q. At the time of location in 1908 did you know W. W. Bell?

A. I knew him. I know him more intimately now.

Q. Who secured the names of the locators besides yourself?

A. I did.

Q. Are or were they bank employees?

A. Yes, sir. They were.

(Signed) B. R. NORVELL.

Subscribed and sworn to before me at Beaumont, Texas, this 22 day of May, 1916.

(Signed) D. R. THOMPSON,  
Mineral Inspector, G. L. O.

Indorsed:—Demand by Plaintiff on B. R. Norvell for Admission of Execution of Affidavit. Filed Feb. 18, 1918.

Beaumont, Texas, February 21st, 1918.

In accordance with the above notice and demand, I hereby admit in writing that I executed a certain affidavit, sworn to and subscribed by me before D. R. Thompson, a Mineral Inspector of the General Land Office, on May 22, 1916, at Beaumont, Texas, a copy of which affidavit is hereto annexed and made by reference a part of this admission.

Witness my hand at Beaumont, Texas, this the 21st day of February, A. D. 1918.

B. R. NORVELL.

Ptff Ex. R. B. Cook, Stenographer.

83 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1167, In Equity.  
B. R. Norvell, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exceptions shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

2.

That the Master refused to allow the expenditures incurred in the production of oil on said property as offsets against the total amount of oil produced; whereas same should be allowed, thereby eliminating this defendant from any liability.

3.

That the Master has certified that this defendant should be held liability in solido with its co-defendants for the \$4,000.00 paid as royalty to the locators; whereas the Master should have certified that there was no liability whatever by this defendant in favor of the Government.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Defendant, Gulf Re-  
fining Company of Louisiana.

Indorsed:—Exception of the Gulf Refining Company  
of Louisiana to the Report of the Special Mas-  
84 ter. Filed Jan. 30, 1919.

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85 In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, et al., Defendants.

Now come B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman and A. Wildenthal, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

That the Master in said report certified that these defendants should be held liable for amounts received by them from the Gulf Refining Company of Louisiana; whereas he should have reported and certified that they were not so liable to the plaintiff.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed:—Exceptions of B. R. Norvell, Chas. H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal to the Report of the Special Master. Filed Jan. 30, 1919.

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86      In the District Court of the United States for  
the Western District of Louisiana.

United States of America,

vs.

No. 1167.

B. R. Norvell, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F-1, 2, 3, 4, 5." "G" "H" "I" "J" "L" "M" "N" "O" "P" "Q" "R" "S" "T", which said exhibits were by agreement of counsel made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 20 N., Range 15 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

87            2. The mineral location in this cause was made December 22, 1908, and embraced 160 acres of land described as the West  $\frac{1}{2}$  of SE $\frac{1}{4}$ , and South  $\frac{1}{2}$  of NE $\frac{1}{4}$ , Sec. 31, T. 20 N., R. 15 West, (answer of defendants to the bill of complaint, and answers of D. Edw. Greer, on behalf of the Gulf Refining Co. of Louisiana, and B. R. Norvell to interrogatories propounded). Defendants in their answer to the bill of complaint (paragraph 5 of answer), and in their answers to the interrogatories propounded to them by plaintiff, admitted that no work had been done upon the land embraced in said



mineral location until December 26, 1908, after said location was made and after the withdrawal of December 15, 1908.

Plaintiff avers that the drilling of said wells and the removal of oil from said land were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. The defendants made said mineral location and drilled said wells with full knowledge of the issuance of the withdrawal order of December 15, 1908 (see answer of D. Edw. Greer on behalf of the Gulf Refining Co. of Louisiana to interrogatory No. 1). Having acted with full knowledge of the facts, the advice of counsel cannot protect defendants.

5. That the said mineral location was not only null and void as having been made after, and in violation of, the withdrawal order of December 15, 1908, but was fraudulent in this, to-wit:

That the said pretended mineral locators, as alleged in the bill of complaint, allowed the use of their names by W. W. Bell, at the request of C. H. Markham, a representative of the Gulf Refining Co. of Louisiana, for the use and benefit of the said Gulf Refining Company of Louisiana, for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana a mineral location of an area of land to which it was not entitled under the law, said pretended

mineral location being made for the use and benefit of a concealed party, viz: The Gulf Refining Company of Louisiana, and was, and is, a fraud upon the United States.

That the laws of the United States prohibit the location of more than 20 acres by one individual (Sec. 2331, Revised Statutes). The said mineral location embraced 160 acres. The said Gulf Refining Company of Louisiana was, and is, a corporation, and could not make a location in its own name, but secured the making of such location with the express understanding and agreement that it would lease the entire tract from said locators. Said agreement was made before the filing of the location and was carried out by the execution of a lease from said locators to the Gulf Refining Co. of Louisiana immediately after said location was made.

That no oral testimony was taken before the Master on this issue; the evidence relating thereto consisting of answers of the defendants to interrogatories propounded to them by plaintiff under equity Rule 58, all of which interrogatories and the answers thereto were offered in evidence by plaintiff and form a part of the record made up in the hearing before the Master.

That the allegations of the bill of complaint were fully established by the admissions of defendants in their answers to said interrogatories, and particularly by the following testimony:

At the date of the said mineral location, B. R. Norvell was the President, and the other locators were employes, of the American National Bank of Beaumont, Texas.

At the time of said mineral location, C. H. Markham was the General Manager of the Gulf Refining Company of Louisiana.

89        At the time of said mineral location W. W. Bell was an employe of the Gulf Refining Company of Louisiana, and was then engaged in buying lands and securing leases for the Gulf Refining Company of Louisiana in Caddo Parish and Northern Louisiana generally, and the location was made by said Bell under powers of attorney from said locators.

The said mineral location was made at the suggestion and request of C. H. Markham, who had been advised that the said Gulf Refining Company of Louisiana could make a location on twenty acres only, and had been further advised not to have said location of the property in controversy made by employes of said company.

The said land was located, staked and surveyed by said W. W. Bell, who, likewise, filed the notice of mineral location.

On the day the location was made, the mineral locators leased said land to the Gulf Refining Company of Louisiana, who undertook to develop the land for oil, and agreed to pay the locators one-half of the production until the proceeds should amount to \$4000.00. The lease so taken was not recorded.

The mineral locators did not see, or go upon, the land until after the location, and did not, themselves, develop or explore the same.

The mineral location was made with the antecedent understanding between the Gulf Refining Company of Louisiana and the mineral locators that the said property would be leased to the Gulf Refining Company of Louisiana, which lease was executed contemporaneously with said location.

After the payment of said \$4000.00 to the locators, the said Company ceased paying royalties and converted the production of said well to its own use and benefit.

The facts aforesaid are shown by the answers of the Gulf Refining Company of Louisiana, and of the mineral locators, to the interrogatories, and particularly by the following:

Answers of Gulf Refining Company of Louisiana to Interrogatories 1, 17, 50 and 51.

Answers of B. R. Norvell to interrogatories 1 and 6.

Plaintiff avers that the facts shown by the record herein prove the fraudulent nature of the mineral location herein made, and that the Master erred in not holding said location to be fraudulent as well as void.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

- (a) Against the Gulf Refining Company of Louisiana for the full value of the oil extracted and removed from said land, less royalties paid of \$4,000.00 all as shown by the Master's report, aggregating . . . . . \$10,561.81
- (b) Against the Gulf Refining Co. of Louisiana, and the several royalty claimants of said Gulf Refining Company of Louisiana, in solido with said company for the amount paid to each of them, as shown by the Master's report (except Lee Blanchett, who is not a party to the suit), all as shown by the Master's report, aggregating . . . . . \$3500.00

(c) Against the Gulf Refining Company of Louisiana in the further sum of \$500.00, being amount of royalty, as shown by the Master's report, paid to said Blanchett by the Gulf Refining Co. of Louisiana .....	\$500.00
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Aggregating, as shown by Master's report	\$14,562.81
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That said mineral location, in addition to being declared null on account of the fact that it was made in violation of the withdrawal order, as recommended by the Master, be also adjudged and decreed to be fraudulent and void.

91 Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

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92 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

B. R. Norvell, et al.

No. 1167.

In order to make the record complete in this suit, counsel for plaintiff and defendants agree as follows:

That all the documentary evidence offered by plaintiff on trial before the Court of the special pleas filed by defendants in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court of the Western District of Louisiana, consisting of plaintiff's exhibits "A" "B" "C" "D" "E" "F" (1, 2, 3, 4, 5)" "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", shall be considered as a part of the record in the present cause, and need not be offered by either party in this suit. For the purpose of appeal copies of said exhibits shall be incorporated in the transcript.

This agreement is made because the stenographer's note of evidence does not show the offering in the present suit of said exhibits, although said exhibits were considered in the hearing before the Master in Chancery, as being a part of the record herein.

Thus done and signed this 29 day of January, 1919.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

THIGPEN & HEROLD,  
Attorneys for defendants.

Indorsed:—Agreement of Counsel. Filed Jan. 30. 1919.

93 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America,

vs.

No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R.  
Millard, A. S. Denman, A. Wildenthal, Gulf Refin-  
ing Company of Louisiana, A. E. Weaver.

This cause came on to be heard at this term and was  
argued by counsel; and thereupon, upon consideration  
thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by  
E. H. Randolph, Special Master in Chancery, be and the  
same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint,  
namely, South Half ( $S\frac{1}{2}$ ) of the Northeast Quarter  
( $NE\frac{1}{4}$ ), and the West Half ( $W\frac{1}{2}$ ) of the Southeast  
( $SE\frac{1}{4}$ ), of Section Thirty-one (31) Township Twenty  
(20) North, Range Fifteen (15) West, Louisiana Merid-  
ian, Louisiana, situated in the Parish of Caddo, Western  
District of Louisiana, containing one hundred and sixty  
(160) acres, be and the same is hereby decreed to have  
been at all times from and after December 15, 1908, law-  
fully withdrawn from settlement, entry, location, sale  
or other form of appropriation under the public land or  
mineral laws of the United States.

III. That the mineral location made December 22,  
1908, by defendants, B. R. Norvell, Charles H. Strouck,  
A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Den-  
man and A. Wildenthal, recorded December 24, 1908, in

Book 51, page 365, of the records of the Parish of Caddo, State of Louisiana, and the lease of said land by said locators to the Gulf Refining Company of Louisiana, be and the same are declared null and void and shall be cancelled.

94           IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of said land shall be restored to plaintiff.

V. That the said defendants, namely, B. R. Norvell, A. E. Weaver, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue, restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and B. R. Norvell, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.



VII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and Charles H. Strouck, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and A. E. Weaver, in solido, and the said  
95 defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and C. M. Smilker, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and P. R. Millard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of five hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of and from the Gulf Refining Company of Lou-

isiana and A. S. Denman, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and no/100 (\$1,000.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the rights of plaintiff, if any, to recover from Lee Blanchett, not a party to the suit, amount of royalty paid to said Blanchett, be reserved, in accordance with recommendation set forth in the Master's report.

XIV. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XV. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XVI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreve-

port, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Twenty Five Hundred (\$2500.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said Receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States

of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,  
United States Judge.

Indorsed:—Decree. Filed Aug. 12, 1919.

B

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98 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1167 In Equity.  
B. R. Norvell, et al., Defendants.

The petition of all the defendants in the above entitled and numbered cause represents:

1.

That they have been aggrieved by the decree rendered by Your Honor and signed on the .... day of August, 1919, wherein they are condemned in solido to pay to the plaintiff the sum of Thirty-five Hundred (\$3,500.00) Dol-

lars, and the Gulf Refining Company of Louisiana, defendant herein, in the further sum of Five Hundred (\$500.00) Dollars, with five (5%) percent per annum thereon from January 11th, 1919; and avers that error has been committed in the rendering of the said decree in this, to-wit:

## 2.

That the Court erred in confirming the report of the Master, which recommended a judgment against all of the defendants in solido in the said sum of \$3,500.00 and against the Gulf Refining Company of Louisiana in the said further sum of \$500.00, when according to the uncontradicted testimony of the witness of the Government and according to the Master's report itself, there was produced from the property in dispute oil to the value of Fourteen Thousand Five Hundred and Sixty-one and 81/100 (\$14,561.81) Dollars, at a cost of production of Forty-one Thousand, Five Hundred and Twenty-four and 50/100 (\$41,524.50) Dollars; so that a loss was entailed in the operation of the property and no damage whatever caused to the Government.

Wherefore, petitioners pray for a rehearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

99

THIGPEN & HEROLD,  
Solicitors for Defendant.

## ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

August 4th, 1919.

RUFUS E. FOSTER,  
United States District Judge.

Indorsed:—Petition for Rehearing. Filed August 13, 1919.

100      714.

Chancery Order Book.      Vol. 5.

United States District Court for the Western District  
of Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,

vs.      No. 1167 In Equity.

B. R. Norvell, et al.

In this cause the Motion for Rehearing which was heretofore filed, came on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. I. Herold, after argument and consideration by the Court,

It is ordered, that this Motion be overruled.

101 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,

vs. No. 1167 In Equity.

B. R. Norvell, et al.

To the Honorable, the Judge of the District Court of the  
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States  
of America, plaintiff in the above numbered and entitled  
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was, in part, error, greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

## ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,

United States Judge.

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ASSIGNMENT OF ERRORS ON PLAINTIFF'S APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1167, In Equity.

B. R. Norvell, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:



## I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

## II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order was issued for the purpose of conserving the public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

## III.

The Court further erred in allowing said counterclaim and in not entering a decree in favor of plaintiff for the

full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knowledge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

#### IV.

The Court erred in allowing said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil. The mineral location was made for the use and benefit of a concealed party, viz: Gulf Refining Company of Louisiana, to enable said Company to acquire an area of land in excess of the amount allowed by law, and was, therefore, a fraud upon the United States.

#### V.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in  
104      suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of said oil, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed :—Plaintiff's Petition for Appeal, Order Allowing Same, and Assignment of Errors. Filed Jan. 3, 1920.

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105      In the District Court of the United States, for  
            the Western District of Louisiana.

United States of America, Plaintiff,

vs.           No. 1167, In Equity.

B. R. Norvell, et al., Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

The defendants in the above entitled and numbered cause, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on December 4, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers

on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

THIGPEN & HEROLD,  
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Six thousand dollars.

RUFUS E. FOSTER,  
United States District Judge.

Jan. 10th, 1920.

Indorsed:—Motion and Order for Appeal. Filed Jan. 12, 1920.  
B.

## SUPERSEDEAS BOND ON APPEAL.

106      In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs.                      No. 1167, In Equity.  
B. R. Norvell, et al., Defendants.

Know all men by these presents: That we, B. R. Norwell, A. E. Weaver, Chas. H. Stronck, C. M. Smither, P. R. Millard, R. S. Denman, A. Wildenthal, and Gulf Refining Co. of La., as principal, and the ..... Company, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Six Thousand Dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and B. R. Norvell, et al., were defendants, numbered on the Equity docket 1167, a decree was rendered and signed against the said B. R. Norvell, et al., and a rehearing thereof refused on December 4th, 1919, and the said B. R. Norvell, et al., having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, if the said above named appellants shall prosecute such appeal to effect and answer all damages and costs if they fail to make thir pleas good, then the above obligation to be void; otherwise to remain in  
 107 full force and effect.

B. R. NORVELL,  
 By S. L. HEROLD, Atty.

A. E. WEAVER,  
 By S. L. HEROLD, Atty.

CHAS. H. STROUCK,  
 By S. L. HEROLD, Atty.

C. M. SMILKER,  
 By S. L. HEROLD, Atty.

P. R. MILLARD,  
 By S. L. HEROLD, Atty.

A. S. DENMAN,  
 By S. L. HEROLD, Atty.

A. WILDENTHAL,  
 By S. L. HEROLD, Atty.

GULF REFINING CO. OF LA.,  
 By S. L. HEROLD, Atty.

(Seal)

AMERICAN SURETY CO. OF  
 NEW YORK,

By R. L. GAFFNEY, Atty. in fact.

By J. C. TRICHEL.

Approved:

RUFUS E. FOSTER, Judge.

Indorsed:—Supersedeas Bond. Filed Jan. 12, 1920.  
 B.

108      In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiffs,  
vs.                      No. 1167, In Equity.  
B. R. Norvell, et al., Defendants.

And now, on this the 10th day of January, 1920, come all of the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of rehearing thereof on the 4th day of Dec., 1919, is erroneous and unjust to the defendants; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including township 20 North, Range 15 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, December 24, 1908), the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

109

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant, Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.



Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.  
B.

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110                      STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1167.

B. R. Norvell, et al.

Counsel for plaintiff and defendant do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, the record on appeal in the cause entitled United States v. Sam W. Mason, et al., No. 1172, on the

docket of the United States District Court for the Western District of Louisiana, contains and includes certain exhibits, the Master's Report, and the opinion of the Court in full, which exhibits, report and opinion are applicable to this cause; and

Whereas, the said suit above mentioned has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and counsel have agreed to incorporate in the transcript in the present cause only the pleadings, exhibits, testimony and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

111 To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in the mineral location, copied into the bill of complaint, made and filed upon the date set forth in said bill of complaint by defendants, Strouck, Weaver, Smilker, Millard, Norvell, Denman and Wildenthal, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Answer of all defendants.
3. Plaintiff's reply to set off and counterclaim.
4. Interrogatories propounded to defendants.
5. Answers of all defendants to interrogatories.
6. Order appointing E. H. Randolph Special Master in Chancery.
7. Note of evidence taken by the Master in Chancery in this cause.
8. Statement of James W. Neal, Special Agent of the General Land Office, marked Plaintiff A, showing quantity and value of oil produced, costs of drilling and operating, together with all other information given in said statement.
9. Affidavit of B. R. Norvell before D. R. Thompson, Mineral Inspector, notice to admit execution of said affidavit and admission of such execution.
10. Exceptions of Gulf Refining Company of Louisiana to Master's report.
11. Exceptions of B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal, to Masters' report.
12. Plaintiff's exceptions to Master's report.

13. Agreement of counsel
- 112        14. Final decree
15. Defendants' petition for rehearing.
16. Order of Court overruling petition for rehearing.
17. Plaintiff's petition for appeal, order allowing same, and assignment of errors.
18. Defendants' petition for appeal, ordering allowing same, supersedeas bond and assignment of errors
19. This stipulation.

Thus done and signed this 13 day of May, 1920.

ROBERT A. HUNTER,  
Attorney for Plaintiff.

THIGPEN & HEROLD,  
Attorneys for Defendants.

Filed May 14, 1920.

# CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one hundred twelve pages contain and form a full, true, correct and complete transcript of the record, assignment of errors, and all proceedings had in a cause wherein The United States of America is plaintiff and B. R. Norvell, et al., are defendants, No. 1167 In Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana,—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the Seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk, U. S. District Court, for the Western District of Louisiana.

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Citations omitted from the printed record, being filed in the Original.

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And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from Minutes of February 24, 1921.

No. 3544.

B. R. NORVELL et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

*Opinion of the Court.*

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western  
District of Louisiana.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.



*Judgment.*

Extract from Minutes of May 17th, 1921.

No. 3544.

B. R. NORVELL et als.

versus

THE UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

*Petition for Appeal and Order Allowing Same.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said de-

cree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

(Signed)

J. A. THIGPEN,  
S. L. HEROLD,  
*Solicitors for Appellants.*

*Order.*

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Twenty-one Thousand Eight Hundred Dollars (\$21,800.00).

June 7, 1921.

(Signed)

R. W. WALKER,  
*Judge U. S. Circuit Court of Appeals.*

*Assignment of Errors.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

*First.*

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

*Second.*

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

**Third.**

The Court erred in holding defendants to be trespassers.

**Fourth.**

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

**Fifth.**

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

**Sixth.**

The Court erred in holding that defendants did not act in good faith.

**Seventh.**

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

**Eighth.**

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

**Ninth.**

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

**Tenth.**

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

## Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

## Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

## Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount paid by it to its co-defendants as royalty.

## Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

## Fifteenth.

The Court erred in not reversing the judgment of the District Court which had condemned defendants in solido in a sum greater than the difference between the value of the oil extracted from the property and the actual cost incurred, as found by the Master and the District Court, of the production of such oil.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

*Solicitors for Defendants.*

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3544.

B. R. NORVELL, CHARLES H. STROUCK, C. M. SMILKER, P. R. MILLARD, A. S. Denman, A. Wildenthal, A. E. Weaver, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wilden-

thal, A. E. Weaver and the Gulf Refining Company of Louisiana, as principals, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of Twenty-one Thousand Eight Hundred (\$21,800.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver, and Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3544, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver, and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) B. R. NORVELL,

By S. L. HEROLD,  
*Atty.*

(Signed) CHARLES H. STROUCK,

By S. L. HEROLD,  
*Atty.*

(Signed) C. M. SMILKER,

By S. L. HEROLD,  
*Atty.*

(Signed) P. R. MILLARD,

By S. L. HEROLD,  
*Atty.*

(Signed) A. S. DENMAN,

By S. L. HEROLD,  
*Atty.*

(Signed) A. WILDENTHAL,  
By S. L. HEROLD,  
*Atty.*

(Signed) A. E. WEAVER,  
By S. L. HEROLD,  
*Atty.*

(Signed) GULF REFINING COMPANY OF LA.,  
By S. L. HEROLD,  
*Atty.*

(Signed) AMERICAN SURETY COMPANY OF  
NEW YORK,  
By CHAS. HOFFMAN,  
*Resident Vice-President.*

Attest:

(Signed) C. MURPHY,  
[SEAL.] *Resident Assistant Secretary.*

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,  
*United States Circuit Judge.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 148 to 157 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3544, wherein B. R. Norvell and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 147, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit Court of Appeals.*

## THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,  
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal and Gulf Refining Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3544 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said B. R. Norvell and others, as in said petition and order for appeal, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,  
*United States Circuit Judge.*

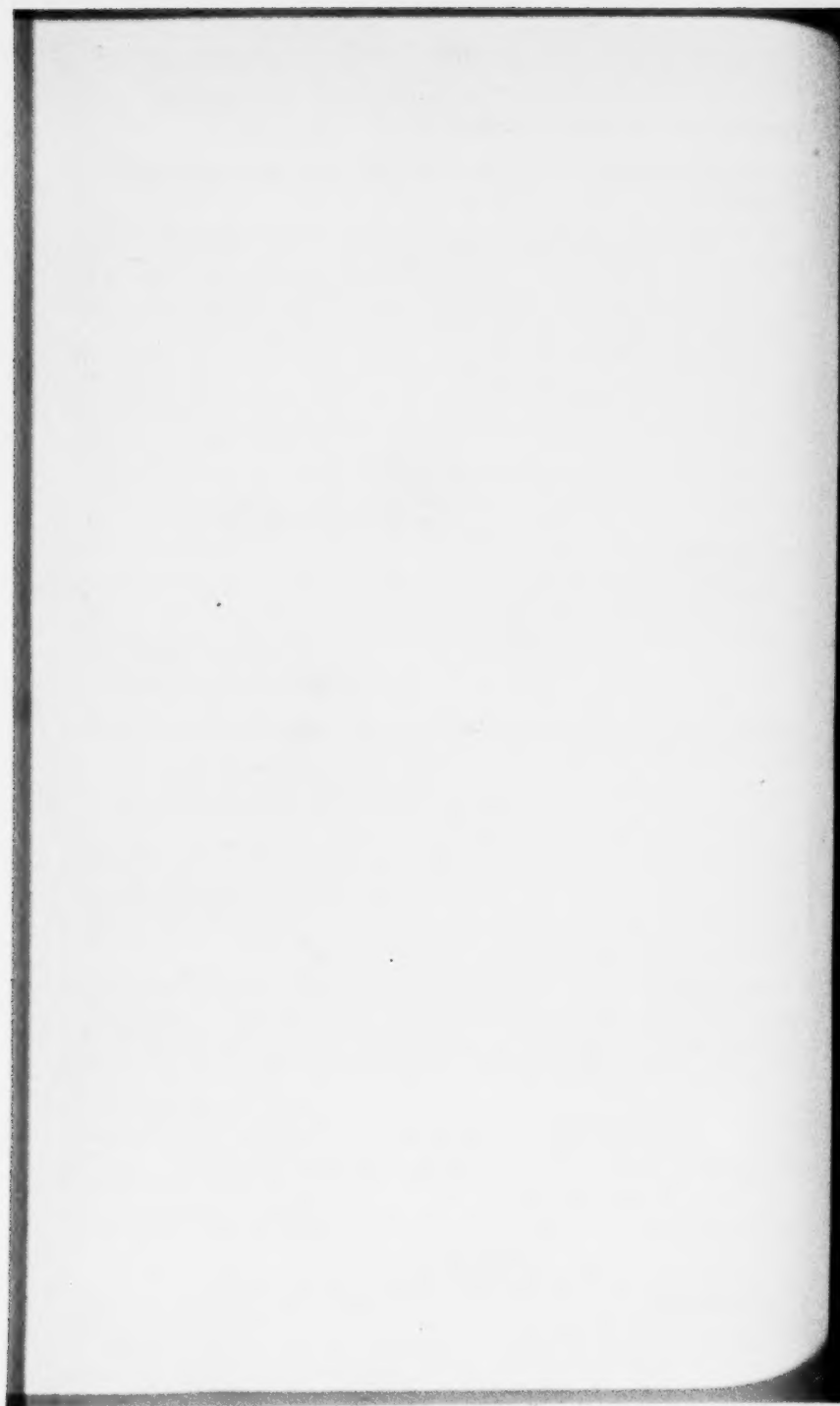
Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

[Endorsed:] No. 3544. United States Circuit Court of Appeals, Fifth Circuit. B. R. Norvell et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,350. U. S. Circuit Court Appeals, 5th Circuit. Term No. 395. B. R. Norvell, Charles H. Strouck, A. E. Weaver, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,350.

(4276)





# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1922

No. 114

---

W. H. MATTHEWS, LYDIA HANSEN MACMULLEN, & A.  
MACMULLEN, ET AL., APPELLANTS.

vs.

THE UNITED STATES OF AMERICA.

---

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

---

FILED JULY 2, 1921.

(28,351)

(28,351)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 396.

W. H. MATTHEWS, LYDIA HANSZEN MacMULLEN, J. A.  
MacMULLEN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

W. H. MATTHEWS, LYDIA HANSZEN McMULLEN, J. A. McMULLEN, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3545, as follows:



UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,  
Plaintiff,  
versus No. 1168 In Equity

W. H. MATTHEWS, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants and Cross Appeal taken by the  
Plaintiff, to the United States Circuit Court of Ap-  
peals, Fifth Circuit, New Orleans, Louisiana.

1 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A.  
McMullen, F. A. Leonard, Sam W. Mason, H. Earl  
Barnes, Dillard P. Eubank, Natalie Oil Company,  
Pure Oil Operating Company, Gulf Refining Company  
of Louisiana, Standard Oil Company of Louisiana,  
Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert  
A. Hunter, Special Assistant to the Attorney General,  
acting herein under the direction and by the authority

of the Attorney General of the United States, brings this bill of complaint against the following defendants:

W. H. Matthews, a citizen of Louisiana and a resident of the City of Shreveport in the Western District of said State, Shreveport Division;

Mrs. Lydia Hanszen McMullen, a citizen of the State of Nevada, and a resident of the town of Carson City, said State;

J. A. McMullen, husband of the said Mrs. Lydia Hanszen McMullen, a non-resident of the state, whose residence is unknown to plaintiff;

F. A. Leonard, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Sam W. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

H. Earl Barnes, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Natalie Oil Company, a corporation organized under the laws of Louisiana, and domiciled and doing business in the City of Shreveport, in the Western District of said State, Shreveport Division;

2      The Pure Oil Operating Company, a corporation organized under the laws of the State of West Virginia and domiciled in the City of Pittsburgh, in the State of Pennsylvania, and doing business in the Western District of Louisiana, with L. C. Blanchard of Shreveport, Louisiana, as its duly authorized agent for the service of process;

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and the

Standard Oil Company of Louisiana, a corporation organized under the laws of Louisiana, and domiciled in the City of Baton Rouge, Eastern District of said State;

and thereupon complains and shows unto your Honor:

### I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number Six (6), Section Ten (10), Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing Thirty-one and sixty-seven hundredths (31.67) acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

### II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of



the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

3        On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public Lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

### III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and

contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill four wells known as Pure Oil Operating Company's Hanszen Nos. 2, 3, 4 and 5, and from three of said wells did withdraw large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

#### IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

#### V.

Plaintiff is informed and believes, that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of an illegal mineral location made by defendants Lydia Hanszen McMullen (then Lydia Hanszen) and W. H. Matthews, pretending to act under the placer mining laws of the United States, which pretended location was recorded April 28, 1910, in Book 59, page 369, of the Conveyance Records of Caddo Parish, Louisiana.

That said pretended mineral location embraced thirty-seven and fifty-eight (37.58) hundredths acres, including the land herein involved, and which location is in words and figures as follows, to-wit:

#### Notice of Mining Location.

L. Hanszen, et al  
to  
The Public.

To all whom it may concern:

Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, having complied with the requirements of Chapter VI, title 32 of the Revised Statutes of the United States, and the local laws, rules and regulations and under authority of the Act of Congress of February 11, 1897, relating to the location of land containing petroleum, oil or other mineral oils under placer mining laws, the undersigned have located and caused a survey to be made, and have taken possession of 37.58 acres of land, described as follows, lying in Caddo Parish, Louisiana, to-wit:

Beginning at a point 24 chs. east of the NW corner Sec. 10 T 20 N. R. 16 W., thence S 20 degrees W. 10 chs.; thence S. 43 degrees E. 20 chs.; to stake at traverse corner which is the beginning of the tract herein located; thence S. 60 degrees W. 8.5 chs.; thence S. 5 chs.; thence S. 45 degrees E. 10 chs.; thence S. 40 degrees W. 1.62 chs.; thence West 34.56 chs. to a stake on traverse line; thence North 30 degrees E. 13.08 chs. along traverse line; thence N. 78 degrees E. along traverse line 30 chs. more or less, to place of beginning, containing 37.58 acres, more or less, and have set stakes at each corner thereof.

Witness our hands this 24th day of April, 1910.

(Signed) L. HANSZEN,  
W. H. MATTHEWS, Locators.

Attest:

SAM W. MASON,  
H. EARL BARNES.

The said above pretended locators themselves made no effort to explore said land, or drill for oil or gas, but on April 30, 1910, by act recorded in Conveyance Book 59, page 387, executed a mineral lease thereon to E. H. Jennings, who on January 6, 1911, by act recorded in Conveyance Book 66, page 665, transferred said lease to the defendant, Pure Oil Operating Company, said instruments having been recorded in the Office of the Clerk and Recorder of Caddo Parish, Louisiana.

That after said lease from said locators, Lydia Hanszen and W. H. Matthews to E. H. Jennings, defendants, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and Natalie Oil Company acquired an interest in the royalty to be paid said locators, Lydia Hanszen and W. H. Matthews.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and leases, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, the said Pure Oil Operating Company, defendant herein, entered upon the said tract of land, drilled wells thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which it marketed and sold to the Gulf Refining Company of Louisiana, and to the Standard Oil Company of Louisiana,

defendants herein; that the said Pure Oil Operating Company received the price of the oil and gas so produced, marketed and sold by it, and paid a royalty therefrom to the above-named locators, Lydia Hanszen McMullen and W. H. Matthews, and likewise to Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company, defendants herein, the amount of which is the the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the defendants is sought.

#### VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

#### VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Sixty-eight Thousand (\$68,000.00) Dollars, and that all of  
 6 defendants herein acted in bad faith in the premises.

#### VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said pretended mineral location recorded April 28, 1910, in Conveyance Book 59, page 369, made by defendants Lydia Hanszen McMullen (then Lydia Hanszen) and W. H. Matthews, the lease thereof, made by the said Lydia Hanszen and W. H. Matthews to E. H. Jennings, on April 30, 1910, by act recorded in Conveyance Book 59, page 387, and the transfer of said lease by the said E. H. Jennings to the Pure Oil Operating Company on January 6, 1911, by act recorded in Conveyance Book 66, page 665, of the records of the Parish of Caddo, Louisiana, as well as the transfers of royalty interests to the defendants, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company, all as above set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, (used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to the Pure Oil Operating Company, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, W. H. Matthews and the Natalie Oil Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such orders, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the following  
 8 defendants, not inhabitants of or now within this district, to-wit: Mrs. Lydia Hanszen McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

And may it further please the Court, that an order be granted and entered directed to J. A. McMullen, defendant herein, directing said defendant to appear and answer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.



AFFIDAVIT.

United States of America,  
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

C. W. CALHEATT,  
Deputy Clerk U. S. District Court  
Northern District of California.

(Seal)

## ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana are not inhabitants of the Western District of Louisiana and are domiciled outside of said district.

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for the period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that copies of this order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,  
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 2, 1917.

10 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A.  
McMullen, F. A. Leonard, Sam W. Mason, H. Earl  
Barnes, Dillard P. Eubank, Natalie Oil Company,  
Pure Oil Operating Company, Gulf Refining Company  
of Louisiana, Standard Oil Company of Louisiana, De-  
fendants.

Now comes the Gulf Refining Company of Louisiana,  
one of the defendants in the above cause, and moves the  
Court to dismiss the bill filed in this case because said  
bill does not state any matter of equity entitling plaintiff  
to the relief prayed for, nor are the facts as stated suffi-  
cient to entitle plaintiff to any relief against this de-  
fendant.

Wherefore, defendant prays that this motion be sus-  
tained, the bill be dismissed as against this defendant,  
and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,  
Solicitor for Defendant, Gulf Re-  
fining Company of Louisiana.

Indorsed:—Motion to Dismiss on Part of Gulf Refin-  
ing Company of Louisiana. Filed Aug. 18, 1917.

B.

- 11 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

The defendants, W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, Natalie Oil Company and Pure Oil Operating Company, answer the bill of complaint herein brought against them as follows: (Natalie Oil Company appearing through its liquidators, J. A. Thigpen & S. L. Herold, said corporation having been dissolved):

## I.

The ownership by the United States, on and before December 15th, 1908, of the tract of land referred to in Article I of the bill of complaint is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

## II

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of

the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that

the last order specially excepted from its force  
 12 and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the minerals laws of the United States.

### III

Your defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the wells referred to in the bill of complaint, from which wells oil has been produced and sold, as hereinafter is fully set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, or to the injury of plaintiff.

## IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants except the Natalie Oil Company (which acquired later by purchase from H. Earl Barnes) were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article One of the bill, and that under said location your defendants were in possession of said land, as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order.

## V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Miss Lydia Hansen (now Mrs. Lydia H. McMullen) and W. H. Matthews; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location, evidenced by the notice of location set out in this article of the bill of complaint, was a legal and  
 13 valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Your defendants admit the execution of lease by said locators to E. H. Jennings (which said lease was taken for account of the Pure Oil Operating Company) and the assignment of said lease to the Pure Oil Operating Company, as recorded in Conveyance Book 66, page 665, of the records of Caddo Parish, Louisiana, and show that under said lease, lawfully made and entered into, said E. H. Jennings (for account of the Pure Oil Operating

Company) proceeded in good faith and according to the terms of said lease to drill upon said location, commencing such effort on June 21st, 1910, and completing same with the discovery of oil in paying quantities by the bringing in of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through wells drilled, as aforesaid, under said mineral location, a large quantity of oil, which, after delivery to the mineral locators of their proportion as royalty, as provided in said lease, the Pure Oil Operating Company has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

#### VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order, and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

#### VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

#### VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, at

which said date and prior thereto, said mineral locators were in the actual possession of said land as bona fide occupants thereof in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact subsequently made through such work) and that as such, all the rights of said locators were specially saved and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910; all of which defendants allege to be true and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

#### IX.

In event they be required to answer further, then your defendants would show that in its operations on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom up to the 31st day of July, 1917, seventy-seven thousand six hundred and five & 17/100 (77,605.17) barrels of oil of the market value of Sixty-eight Thousand Five Hundred and Sixty-four & 62/100 (\$68,564.62) Dollars; one-eighth whereof, or nine thousand seven hundred & 65/100 (9,700.65) barrels of oil of the market value of Eight Thousand Five Hundred Seventy & 57/100 (\$8,570.57) Dollars was delivered to said locators under the stipulations of the lease, and the remainder retained by said Pure Oil Operating Company for its own use as owner, all of which it had the right to do.



## X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the minings laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Pure Oil Operating Company, 15 likewise, before acquiring said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of Miss Lydia Hanszen and W. H. Matthews was validly made upon land subject to location under the placer minings laws of the United States, and relying upon the advice of counsel so given, acquired said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

## XI.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said wells were drilled in good faith and under such belief of right.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for any oil extracted therefrom; the cost of drilling, equipping and operating said wells will be set out later by an amendment to be filed to this answer.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Pure Oil Operating Company may be adjudged not liable to the plaintiff on such  
16 account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said wells and of the operation thereof up to date of final settlement; and that, if this relief is refused, then that all such expenditures and outlays by

said defendants in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Pure Oil Operating Company and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

THIGPEN & HEROLD,  
BARNETTE & BLANCHARD,  
Solicitors for Respondents.

Indorsed:—Answer. Filed Sep. 29, 1917.

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17 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company of Louisiana, Standard Oil Company of Louisiana, Gulf Refining Company of Louisiana, Defendants.

And now come the defendants, W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold as liquidators of the Natalie Oil Company, in the above and entitled cause, and move the Court for leave to amend their answer, as will appear

in the amended answer herewith filed. That said amendments are material and necessary to a proper defense of the case; that the matter as amended and the amendments offered were not incorporated in the original answer because of the fact that counsel for defendants had not at the time within which the answer was due accurate knowledge of the facts stated in the amendments.

Wherefore, they pray that said amendments be allowed and considered a part of the answer upon the hearing of this cause.

BARNETTE & BLANCHARD,  
THIGPEN & HEROLD,  
Attorneys for Defendants.

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18      In the District Court of the United States for  
                 the Western District of Louisiana, Shreve-  
                 port Division.

United States of America, Plaintiff,

vs.                      No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants,

This cause coming on to be heard on the motion of defendants to amend their answer, and both parties having appeared, and the Court being fully advised of the amendments sought to be made to the answer of the defendants heretofore filed in this cause, it is hereby ordered, ad-

judged and decreed that the motion be granted and that the amendments as set forth in the motion be allowed; and the Clerk of the Court is hereby ordered to file the same as of the date of this order, as amendments to the original answer.

Thus done and signed at Chambers, at Shreveport, Louisiana, on this the 31 day of October, 1917.

GEO. WHITFIELD JACK,  
United States District Judge.

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19 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

Amended answer of W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubanks, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants in the above entitled and numbered cause.

Now come the said defendants and, with leave of this Court first had and obtained, file this amendment to the answer heretofore filed, as follows:

Defendants amend Article XI of their original answer so as to read as follows:

# XI.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said wells were drilled in good faith and under such belief of right.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, of any such liability there be, for the value of any oil extracted therefrom.

And defendant shows that the actual cost to your defendant of the drilling of said wells was the sum of Forty-one Thousand Three Hundred and Seventy-eight  
 20            & 26/100 Dollars (\$41,378.26); and that the actual cost to your defendant of the operation of said well for the production of oil, up to and including July 31st, 1917, amounted to Twenty-five Thousand, Six Hundred and Sixty-two & 90/100 Dollars (\$25,662.90).

Wherefore, reaffirming the allegation and prayer of their original answer filed herein, defendants pray for judgment as originally prayed for.

THIGPEN & HEROLD,  
BARNETTE & BLANCHARD,  
Attorneys for Defendants.

Indorsed :—Amended Answer. Filed Oct. 31, 1917.

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21 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

## II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

## III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 10, and the prayer of said answer.

## IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

## VI.

Plaintiff further shows, in the alternative, that even if  
22        the said defendants are entitled to a set off, or  
      counterclaim, in any amount, which is denied,  
      the sum claimed by the defendants is excessive  
and should not be allowed.

## VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and dis-



allowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.

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23 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port, Division.

United States of America, Plaintiff,  
vs. No. 1168, In Equity.  
W. H. Matthews, Et Al., Defendants.

### I.

Now into this Honorable Court comes the United States, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and with respect shows:

### II.

That in the original reply to the answer of defendants filed herein, plaintiff inadvertently referred to paragraph 10 of said answer as being one of the paragraphs where in a set off and counterclaim was asserted. Plaintiff shows that the said set off and counterclaim are asserted in paragraph II, and the prayer of said answer, and the said reply should be amended accordingly.

## III.

Wherefore, reaffirming the allegations and prayer of the original reply filed herein, plaintiff prays that said reply be amended as hereinabove set forth.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Amended Reply to Defendants' Set Off and Counterclaim. Filed Oct. 6, 1917.

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24 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs.

No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

## I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to set off and counterclaim asserted by defendant the Pure Oil Operating Company in the amended answer herein, shows:

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

## III.

Plaintiff denies all the allegations of the said amended answer relating to said set off and counter claim, and particularly paragraph 11, and the prayer of said amended answer.

## IV.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

## VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

## VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and dis-

allowed, and that plaintiff here relies in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Reply to Six (6) and Counter Claims of Defendant (Pure Oil Operating Company) in the Amended Answer. Filed Nov. 5, 1917.

- 26      In the District Court of the United States for  
         the Western District of Louisiana, Shreve-  
         port Division.

United States of America, Plaintiff,

vs.

No. 1166 in Equity.

W. H. Matthews, Mrs. Lydia Hannon McMillan, J. A.  
McMillan, F. A. Leonard, Sam W. Mason, H. Earl  
Harnes, Willard P. Edmund, National Oil Company,  
Pure Oil Operating Company, Gulf Refining Com-  
pany of Louisiana, Standard Oil Company of Louisi-  
ana, Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana  
Sitting Within and for the Shreveport Division:

The answer of the Standard Oil Company of Louisi-  
ana, one of the defendants, to the Bill of Complaint of  
the United States of America, complainant.

This defendant avails and reserves unto itself all  
and all manner of benefits and advantages of exemption,  
which can or may be had or taken in the many cases,  
uncertainties and other imperfections in said Bill of

Complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says as follows:

First: This defendant is not sufficiently informed as to the matters and things alleged and set out in paragraphs one and two of said Bill of Complaint to admit the same as therein stated, and, therefore, formally denies the same and leaves the complainant to make such proofs thereof as it may be advised.

Second: This defendant denies that it took possession of any part of the property described in paragraph three of plaintiff's Bill of Complaint, or that it drilled any wells thereon, but admits that it took oil from said property, or a part thereof, under the terms and conditions hereinafter stated.

Third: In answer to the fourth paragraph of plaintiff's Bill of Complaint, this defendant says that  
 27 it is not sufficiently informed as to whether any of its co-defendants were in possession of the property on the day and dates therein alleged, and for that reason it is unable to admit the matters and facts therein stated; but it denies that it was in possession of said property, or any part thereof, or, at the time, claiming rights of any nature or character whatever in connection therewith.

Fourth: In answer to the fifth paragraph of plaintiff's Bill of Complaint this defendant admits that L. Hanszen (now Mrs. McMullen) and W. H. Matthews made a mineral location on said property, but it is not sufficiently advised in the premises to say whether the

location was legal or illegal, and, therefore, formally denies that said mineral location was illegal, and leaves the Complainant to make such proof thereof as it may be advised; that it is not advised as to whether the locators made an effort to explore said land, but admits that they made and executed a mineral lease thereon to E. H. Jennings, and that the said E. H. Jennings made a transfer thereof to the Pure Oil Operating Company, one of its co-defendants, as therein alleged, and, that, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company acquired an interest in the royalties to be paid to the locators, Lydia Hanszen (now Mrs. McMullen) and W. H. Matthews, as therein alleged.

Further answering, this defendant admits that it has no interest or title in said property, and being without information as to the other matters of fact alleged in this paragraph of the Bill of Complaint is not in a situation to admit the same as therein stated, and it, therefore, formally denies the same and leaves the Complaint to make such proof thereof as it may be advised; but this defendant avers, however, that it is unable to state what quantity of oil was taken from said property, or from what wells said oil was taken, and the number of wells drilled on said property; that it took a part of the oil produced from said property which was run into its pipe lines as hereinafter stated.

Fifth: This defendant avers that on February 26, 1912, the said Pure Oil Operating Company, L. Hanszen (now Mrs. McMullen), D. P. Eubank, Sam W. Mason, F. A. Leonard, W. H. Matthews and H. E. Barnes executed a division order, or agreement, with this defendant, wherein and whereunder they declared, certified and guaranteed to it that they were the legal owners of

wells Nos. 1 and up drilled in the NW $\frac{1}{4}$  of Section 10, Township 20, Range 16, which, as your defendant is advised, embraces a part of the property described in the Bill of Complaint, and, that this defendant acquired oil from said parties, in good faith, and for valuable consideration, taken from said property, but this defendant is without information as to the number of wells drilled on said property, or the amount of oil taken therefrom, and whether the same was located on the particular property, the ownership of which is now claimed by the complainant, and this defendant annexes hereto a copy of the contract under which said oil was taken and the various assignments, and makes the same a part hereof, and marked "Defendant—Exhibit A."

Sixth: This defendant further answers that the oil so taken was acquired from said parties at the market price thereof on the respective dates on which the same was run into its pipe lines; that the total number of barrels of oil taken by this defendant from said parties amounts to 68,592.38 barrels, of the value of \$65,786.95; that of the amount due for said oil the sum of \$35,790.74 has been paid to the respective claimants, as hereinafter set out, and that this defendant now has in its hands \$29,996.21 to be paid to the rightful owner, or owners; when the question of title to said property from which said oil was taken is finally determined. All of the oil taken, as aforesaid, and the amounts paid and retained will be shown by itemized statement which will be produced on the hearing hereof.

Seventh: This defendant denies that it bought said oil in bad faith. On the contrary, it avers that it acquired same in good faith, and run the same into its pipe lines from wells claimed to be owned by its co-defendants.

Eighth: Defendant further avers that it does not know and is not informed which one of the well or wells drilled on said property is or are on the land in controversy, but that said oil was bought by it from the supposed owners, as alleged in paragraph five of this answer, and that the same was received and taken by it into its pipe lines, but not from any particular, separate or distinct or designated well or wells, but that all of said oil was run and taken from wells drilled on said premises without reference to any particular or designated well or wells, and that it is unable to state with any degree of certainty the amount of oil taken from any or from each of the wells drilled on said property.

29       and that prior to the taking of any of said oil it was advised by the alleged owners that the title thereto was vested in them, and that the oil so bought was acquired in good faith.

Ninth: Further answering, this defendant avers, in the alternative, that it acquired said oil from its co-defendants, who warranted the title to the property from which the same was taken, that in the event their title to said property should be declared void, and this defendant held for the purchase price thereof, its co-defendants would constitute warrantors of the title thereto; and they being parties to said suit, should this defendant be declared liable to the said complainant, for the value thereof, then, and in that event, it should have a like judgment against its co-defendants for such judgment as may be rendered against it in the premises; that such relief, in behalf of this defendant, would avoid a multiplicity of suits, and that in law and equity, should it be cast, it is entitled to a like judgment against each of them for such amounts as might be shown to have been paid to them.



Tenth: Further answering this defendant avers that when some question was raised as to the ownership of said property it required of said defendants bonds of indemnity to secure it against any loss which might be occasioned by any successful claim urged against their said titles, and to that end some of said parties executed bonds to indemnify it against loss of any nature or character whatever occasioned by adverse claims of ownership to said property, or the oil taken therefrom; that in conformity with said requirement, the said Pure Oil Operating Company executed a bond, of date June 15th, 1914, in the sum of \$50,000.00 with the American Surety Company of New York as surety, as shown by copy attached hereto and marked "Defendant Exhibit B"; that H. L. Heilperin and H. E. Barnes executed bond for \$5,000.00, of date January 25, 1914, with J. A. Thigpen and S. L. Herold, both residents of Caddo Parish, Louisiana, as surety, as also shown by copy of said bond annexed hereto and marked "Defendant Exhibit C"; that D. P. Eubanks executed a bond for \$2,500.00, of date June 14, 1913, with the United States Fidelity & Guaranty Company as surety, which is also shown by copy of said bond which is annexed hereto and marked "Defendant Exhibit D"; that said Sam W. Mason executed a bond for \$2,500.00, of date February 9, 1914, with H. L. Heilperin as surety, which is also shown by copy of said bond which is annexed hereto and marked 30 "Defendant Exhibit E"; that the said Sam W.

Mason executed another bond for \$2,500.00, of date June 5th, 1914, with H. L. Heilperin also as surety, which is also shown by copy of said bond which is annexed hereto and marked "Defendant Exhibit F"; that upon the execution of said bonds the said sum of \$35,790.74 was paid to its co-defendants, on the faith thereof, said amounts, so paid, being shown by itemized

statement to be produced on the hearing hereof; and this defendant reserves the right, in the event it should be cast in this proceeding, to proceed against said sureties and principals to recover any loss it may sustain by reason of any judgment which may be obtained by the complainant against it.

Wherefore, this defendant having made full and complete answer to all the matters and things required of it in plaintiff's Bill of Complaint, prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and on final hearing should this defendant be cast, that a decree be entered in its favor against its co-defendants for such judgment as may be rendered against it on the demands of the complainant; and, finally, this defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all other necessary orders and decrees as it may be entitled to in equity and good conscience, and from the nature and character of this case.

J. C. PUGH & SON,  
Solicitors for Standard  
Oil Co. of La.

31 DEFENDANT EXHIBIT A.

Copy.

Shreveport, La., Feby. 26, 1912.

To The Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of.....Wells Nos. 1 and up on the Hanszen-Matthews Farm, NW $\frac{1}{4}$  Sec. 10, Township 20-R.

16 Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit to	Division of Interest.	Postoffice Address.
The Pure Oil Operating Co.	$\frac{7}{8}$	
L. Hanszen	$\frac{3}{8}$ of $\frac{1}{8}$	517 Marshall St., Shreveport, La.
D. P. Eubank	$\frac{1}{8}$ of $\frac{1}{8}$	Box 412, Shreve- port, La.
Sam W. Mason	$\frac{1}{8}$ of $\frac{1}{8}$	517 Marshall St., Shreveport, La.
F. A. Leonard	$\frac{1}{8}$ of $\frac{1}{8}$	Court House, Shreveport, La.
W. H. Matthews	$\frac{1}{8}$ of $\frac{1}{4}$	517 Marshall St., Shreveport, La.
H. E. Barnes	$\frac{1}{8}$ of $\frac{1}{8}$	235 Stoner Ave., Shreveport, La.

Tank Nos. ....

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company

of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

- (1) By E. H. JENNINGS, Treasurer.
- (2) F. A. LEONARD,
- (3) SAM W. MASON,
- (4) H. E. BARNES,
- (5) D. P. EUBANK,
- W. H. MATTHEWS,
- L. HANSZEN.

Witness:

W. J. HIGGINS (1),  
S. L. CRONIN (2, 3, 4 & 5).

Approved:

J. C. PUGH.

32

Copy.

March 11th, 1912.

To The Standard Oil Co. of La.:

The undersigned has this day sold  $\frac{1}{2}$  of his interest in Wells Nos. 1 and up, on Hanszen-Matthews Farms, Mineral Location in Sec. 10, T. 20, R. 16, in ..... Township, Caddo Parish, State of Louisiana, as below:

Interest.	Name.	Postoffice Address.
1/128	H. L. Heilperin,	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

H. E. BARNES.

Tank Nos. ....

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their

assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

H. L. HEILPERIN.

Witness:

FRANK SHROPSHIRE.

J. C. PUGH.

33

Copy.

March 1st, 1916.

To The Standard Oil Company of La.:

The undersigned has this day sold 1/64 interest in Wells Nos. 1 and up, on Hanszen-Matthews Farm, Sec. 10, T. 20, R. 16, Township, Caddo Parish, State of Louisiana, as below.

Interest.	Name.	Postoffice Address.
1/64	Natalie Oil Company,	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tank Nos. ....

H. E. BARNES,  
 ESTATE OF H. L. HEILPERIN,  
 By MARX. BLUESTEIN,  
 J. A. THIGPEN, Executors.

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,

By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,  
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.

(Copy)

State of Louisiana,  
Parish of Caddo.

Know all men by these presents, That we, The Pure Oil Operating Company, as principal and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in full sum of Fifty Thousand (\$50,-



000.00) Dollars, for the payment of which we bind ourselves, our successors and legal representatives, jointly and in solido by these presents.

Dated at Shreveport, Louisiana, this 15th day of June, in the year of our Lord, One Thousand Nine Hundred and Fourteen.

The conditions of the above obligations is such that:

Whereas, the said Pure-Oil Operating Company as the lessee of L. Hansen et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three (3) and Four (4), Township 20, North, Range 16, West, being the same tract of land located under the placer mining laws by the lessors on April 2nd, 1910, as appears from the said location recorded in the Conveyance records of Caddo Parish, La., and,

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ of error and sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said Pure Oil Operating Company; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hansen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Ten, Township Twenty, North, Range sixteen, West,  
 35 and being more particularly described as follows:

Beginning at a point twenty-four chains East of the Northwest corner of said Section ten; thence South

twenty degrees West ten chains; thence north forty-three degrees East twenty chains to a stake at square corner, which is the beginning of the tract as located and located located; thence north sixty degrees west eight and five-tenths chains; thence north five chains; thence north forty-five degrees East ten chains; thence South forty degrees west one and sixty-one one-hundredths chains; thence West thirty-four and fifty-six one-hundredths chains to stake on trappers line; thence North thirty degrees East thirteen and eight one-hundredths chains along trappers line; thence North seventy-eight degrees East along trappers line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres, more or less, a stake being set at each corner of said tract, and being the same land surveyed and sold the lines and corners marked by the locators on April 28th, 1904, under their title and claim under the Placer Mining Laws of the United States, as appears from said location, recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, patent has not yet been obtained under the said mining locations and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections three and four, Township twenty, Range sixteen, being a long narrow strip of land running along the South line of said Sections and known as the "Glass Mineral Pit"; and,

Whereas, the said Standard Oil Company of Louisiana, the assignee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said above pieces of land above described,

4  
5

and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company.

36 Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United States of America, and to all and every other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the Credit of and purchased from other and third persons claiming to be interested therein, but only to cover and embrace the oil run therefrom to the credit of and purchase from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING  
COMPANY,

By E. H. DEMMINGS,

Its President.

(Seal)

Attest:

W. J. HIGGINS, Its Secretary.  
AMERICAN SURETY COMPANY  
OF NEW YORK,

By LEON R. SMITH,

Resident V.-Pres. (Seal)

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

W. B. CARLON,  
C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

N. C. BLANCHARD,  
GEO. G. DIMICK.

Approved:

J. C. PUGH.

37

(DEFENDANT'S EX. C.)

State of Louisiana.

Parish of Caddo.

Know all men by these presents: That we, H. L. Heilperin and H. E. Barnes, as principal, and J. A. Thigpen and S. L. Herold, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana in the sum of Five Thousand (\$5,000.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 25th day of January, A. D. 1914.

Now the condition of the above obligation is such that:

Whereas, the Pure Oil Operating Company claims to have a lease on two tracts of land in Caddo Parish, under assignments of lease from E. H. Jennings, the said Jennings having leased one of said tracts from L. Hanszen and others on tract of land located by said lessors under the Placer Mining Laws on April 2, 1910,

and fully described in notice of location in Conveyance Book 59, Page 267, of the records of Caddo Parish; and the other lease having been executed to said Jennings by L. Hanszen and others on the tract of land containing thirty-seven acres in the Northwest  $\frac{1}{4}$  of Section 10, Township 20 North, Range 16 West; the said tract having also been located by the said lessors under the Placer Mining Laws of the United States, on which said company has drilled wells producing oil.

Whereas the oil from said wells is being run by the Standard Oil Company of Louisiana, and the above bounden H. L. Heilperin and H. E. Barnes claim a royalty jointly of one-thirty-second ( $\frac{1}{32}$ ) of the oil produced from said wells under the terms of the lease made by E. H. Jennings, as per said contracts, and,

Whereas, by the contract under which the Standard Oil Company of Louisiana is taking said oil from said wells, as aforesaid, the said H. L. Heilperin, and H. E. Barnes have the right to withdraw their part of the proceeds from said oil run from said wells by executing bond with approved security:

Now, therefore, if the said bounden H. L. Heilperin and H. E. Barnes, shall hold the said Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants whatever to said property, or to the oil produced therefrom, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said H. L. Heilperin and H. E. Barnes, together with all damages and costs, then and in such event, this obligation to be null and void, otherwise to remain in full force and effect.

Thus done and signed in the presence of the undersigned witnesses on this the 25th day of January, A. D. 1914.

H. L. HEILPERIN,  
H. E. BARNES,  
J. A. THIGPEN,  
S. L. HEROLD.

Witnesses:

E. G. COLLINS,  
WHEELER SHROPSHIRE.

Approved:

J. C. PUGH.

39

DEFENDANT EX. D.

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, D. P. Eubank, as principal, and the United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Twenty-Five Hundred (\$2500.00) Dollars, which said sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 14th day of June, 1913.

Now the condition of the above obligation is such-that:

Whereas the above bounden D. P. Eubank claims to be the owner of an undivided one-sixty-fourth (1/64)

interest in and to what is known as Lease No. 64, on the Hanzen-Matthews Farm in Section three (3) and four (4), Township 20, North, Range 16 West, and also an owner of an undivided one-sixty-fourth ( $1/64$ ) interest in and to what is known as Lease No. 65, on the Hanzen-Matthews Farm in Section 10, Township 20 North, Range 16 west, in Caddo Parish, Louisiana, and,

Whereas the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounded D. P. Eubank claims to be entitled to the one-sixty-fourth ( $1/64$ ) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana, from each of the above wells; and

Whereas by the contract, under the Standard Oil Company of Louisiana, is taking such oil from said well, as aforesaid, the said D. P. Eubank has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security.

40           Now, therefore, if the said above bounden D. P. Eubank shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said D. P. Eubank, under his said claim as owner of an undivided one-sixty-fourth ( $1/64$ ) interest in said oil secured from each of the above wells, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) D. P. EUBANK

(Seal)

Witness to signature of D. P. Eubank:

(Signed) J. S. PETERS,  
T. S. WHITE.

UNITED STATES FIDELITY &  
GUARANTY CO.,

By (Signed) WILLIAM H. KLINE SMITH,  
Its Atty. in Fact.

Witness:

(Signed) E. P. HURMIN.

State of Louisiana,  
Parish of Caddo.

Before me, Sam W. Mason, a notary public, in and for Caddo Parish, State of Louisiana, duly commissioned and qualified, personally came and appeared D. P. Eubank, who acknowledged to me that he has signed the above and foregoing bond on the day same bears date.

Given under my seal and signature of office, this, the 17th day of June, A. D. 1913.

(Signed) SAM W. MASON,  
Notary Public in and for  
Caddo Parish, Louisiana.

Approved:

J. C. PUGH.

Witness:

J. S. PETERS,  
T. S. WHITE.



Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 9th day of February, A. D. 1914;

Now the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 3555 and 387, and to which reference is hereby had, and which said properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana in taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said  
42 oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden Sam W. Mason shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,

(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,  
CREA PUGH.

Approved:

J. C. PUGH.

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 5th day of June, 1914.

Now the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 355 and 387, and to which reference is hereby had, and which properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said  
 44 oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden Sam W. Mason shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,  
 (Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,  
 R. WOLF.

Approved:

J. C. PUGH & SON.

Filed Oct. 1, 1917.

45 (INTERROGATORIES PROPOUNDED TO  
PURE OIL OPERATING CO., GULF  
REFINING CO. OF LA. AND STANDARD  
OIL CO. OF LA., BY PLAINTIFF.)

(1)

In the answer of the Pure Oil Operating Company to the bill of complaint herein, it is stated that said Company drilled the wells known as Pure Oil Operating Company's Hanszen, or Hanszen-Matthews, Nos. 2, 3, 4 and 5. State when said wells were commenced and when they were completed.

(2)

In said answer of the Pure Oil Operating Company, it is further stated that the production of oil from the land in controversy to July 31, 1917, was 77,605.17 barrels, of the value of \$68,564.62. State whether or not the production of said well as given in said answer is exact or estimative.

(3)

State the total production of oil from the said wells (2) up to July 1st, or July 31, 1917, and (b) from July 1st, or July 31, 1917, to January 1, 1918.

(4)

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5)

Was a separate and complete record kept by the Pure Oil Operating Company of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6)

If the production as given by you in your answer in the bill of complaint and in your answers to the preceding interrogatories is based on an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the wells in suit.

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(7)

State the total market value of the oil produced by the Pure Oil Operating Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(8)

Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1, 1912, the production of said wells was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana. If the

production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom.

(9)

State the quantity and value of the oil extracted from the land in controversy, which was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana.

(10)

State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

(11)

What was the total price received by the Pure Oil Operating Company for all the oil produced by the wells in controversy. Please state separately the price received by the Pure Oil Operating Company from the Gulf Refining Company of Louisiana, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana, for the oil extracted from the land in suit, and sold to said Companies, respectively.

(12)

Was not the said oil sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana delivered to said Gulf Refining Company on the land where it was produced, that is, on the property in controversy, by transfer from a tank or tanks, in which the

oil was stored, to a pipe line belonging to the Gulf Refining Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Gulf Refining Company of Louisiana?

(13)

Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

(14)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

(15)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

(16)

Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity



of oil transferred from the tank, or tanks, to the pipe line of said Gulf Refining Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

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(17)

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipeline run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line. If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(18)

In the answer of the Standard Oil Company to the bill of complaint herein it is stated that 68,592.38 barrels of oil of the value of \$65,786.95 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred

to in said answer was taken from the property in controversy in this case?

(19)

State the quantity and value of all the oil taken and removed by the Gulf Refining Company of Louisiana from the land involved in this suit.

(20)

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$35,790.74 has been paid to the claimants of said oil, and that \$29,996.21 is held for payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

49

(21)

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(22)

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said

oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(23).

What are the principal products manufactured from petroleum, or crude oil?

(24)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(25)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

(26)

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(27)

How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of

sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Note: All of the above interrogatories, except Nos. 18, 20, 21, 22, 23, 24, and 25 to be answered by the Pure Oil Operating Company.

Interrogatories 8, 9, 12, 14, 16, 19, 22, 23, 24, 26, and 27 are to be answered by the Gulf Refining Company of Louisiana, and no other interrogatories are to be answered by that Company.

Interrogatories Nos. 8, 10, 13, 15, 17, 18, 20, 21, 23, 25, 26 and 27 are to be answered by the Standard Oil Company of Louisiana, and no other interrogatories are to be answered by that Company.

Indorsed: Interrogatories to be Answered by the Pure Oil Operating Company, The Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana. Filed Feb. 2, 1918.

51        In the District Court of the United States for  
             the Western District of Louisiana.

United States of America, Complainant,  
   vs.        No. 1168, In Equity.  
W. H. Matthews, Et. Al., Defendant.

In the above entitled matter now comes the Standard Oil Company of Louisiana, one of the defendants herein, through its undersigned counsel, and suggesting to the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are interrogatories Nos. 25 and 26, as follows:

Interrogatory No. 25: State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

Interrogatory No. 26: State the total profits made by you (a) from the sale or any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the profits of said crude oil.

Now this defendant avers that it will fully appear by the petition and answer herein that the only issuable facts between the plaintiff and this defendant is the value of the oil bought by it from the property in dispute, the ownership of which is claimed by plaintiff; that from the issues made up the answers to these two interrogatories could in no way tend to support the demands of the plaintiff against this defendant, and are, therefore, ir-

relevant and immaterial to any issues involved in said cause as between the plaintiff and this defendant, and an answer thereto would not illicit any fact or facts material to the support of plaintiff's action, and that said interrogatories should be stricken out.

52       Wherefore, this defendant prays that after due consideration said two interrogatories be stricken out and that this defendant be dispensed with the necessity of answering the same.

It prays for all rules, orders and decrees needful, and for cost and general relief.

J. C. PUGH & SON,  
Atty. for Standard Oil Co. of La.

Indorsed:—Motion of the Standard Oil Company of Louisiana to Strike Out Interrogatories Nos. 25 and 26. Filed Feb. 1, 1918.

B.

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53       In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant.

vs.               No. 1168, In Equity.

W. H. Matthews, Et. Al., Defendant.

In the above entitled matter Amos K. Gordon, Secretary and Treasurer of the Standard Oil Company of Louisiana, appears and answers the interrogatories propounded to the Standard Oil Company of Louisiana, (except Nos. 25 and 26—a motion having been made to strike them out) as follows:

Interrogatory No. 8: Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1st, 1912, the production of said wells was sold by the Pure Oil Operating Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it has no information as to the sale of oil from the property referred to prior to February 27, 1912, but on that date it began to take oil from the wells in question.

Interrogatory No. 10: State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement marked "Exhibit A" shows the quantity and value of the oil bought by it from the Pure Oil Operating Company from February 27, 1912, (date of first run) to August 1, 1917.

Interrogatory No. 13: Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company

of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the oil in question was sold by the Pure Oil Operating Company to it from tanks located on the property in dispute, and was transferred from tanks in which it was stored to the pipe line belonging to it, and that said oil was conveyed from said tanks in pipe lines belonging to it.

Interrogatory No. 15: What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the quantity and value of the oil sold to it by the Pure Oil Operating Company from the property in dispute. It answers that it is unable to state from what particular wells the oil was taken as alleged in its answer, as it had no control or jurisdiction over the wells but bought the oil as delivered in tanks.

Interrogatory No. 17: Is it not a fact that the agent, representative or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascer-



tain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is a fact that the representative of this Company went upon the land in controversy and gauged the tank from which the oil was taken, and that said representative did not measure and ascertain the amount of oil purchased by it from the Pure Oil Operating Company.

Interrogatory No. 18: In the answer of the Standard Oil Company to the bill of complaint it is stated that 68,592.38 barrels of oil of the value of \$65,786.95 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this case?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the actual number of barrels of oil taken and the value thereof, and according to the information of its agents and employees it is advised that the oil was taken from the property in dispute.

Interrogatory No. 20: In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$35,790.74 has been paid to the claimants of said oil, and that \$29,996.21 is held for pay-

ment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

55 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the exact amount of money paid for oil bought from the Pure Oil Operating Company said to have been taken from the property in dispute, and the names of the various persons to whom the money was paid, and the amount of money now held in its hands to be paid to the rightful owner or owners when the title to said property is finally settled. The annexed division order and transfer orders will show the names and addresses of the respective parties inquired about in said interrogatory,—and marked "Exhibit B."

Interrogatory No. 21: State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged as the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is engaged in the manufacture and sale of oil and its products; and the oil taken from the property in con-

troversy being of a light character was probably manufactured, although all the oil taken from wells in this locality was run into the pipe line and it could not be stated with absolute certainty that this particular oil was manufactured.

Interrogatory No. 23: What are the principal products manufactured from petroleum, or crude oil?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the principal products manufactured from petroleum, or crude oil, are what is commercially known as gasoline, kerosene, engine distillate, lubricating oils of various grades, gas oil, fuel oil, paraffine and coke:

Interrogatory No. 27: How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement referred to will show all of the money paid to the royalty owners, and furnish such other information as is inquired about in this interrogatory.

A. K. GORDON,  
Secretary and Treasurer.

Sworn to and subscribed before me on this the 8th day of February, 1918.

(Seal) F. B. BEALE,  
Notary Public, in and for the  
Parish of East Baton Rouge,  
Louisiana.

56 Indorsed:—Answer of the Standard Oil Company of Louisiana to Interrogatories. Filed Feb. 11, 1918.

57 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1168, In Equity.  
W. H. Matthews, Et. Al., Defendant.

In the above entitled and numbered cause, now comes the Pure Oil Operating Company, through W. J. Higgins, its Treasurer, a proper Officer of the said corporation for the answering of interrogatories to it herein, and answers, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Well No. 2 was commenced June 20th, 1911, and completed August 3rd, 1911; Well No. 3, commenced May 4th, 1912, and completed June 7th, 1912, (abandoned in January, 1914); Well No. 4 commenced November 20th, 1912, completed December 31st, 1913; and Well No. 5, commenced January 13th, 1914, completed February 25th, 1914, (as a dry hole).

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to August 1st, 1917, for account of this defendant, are exact.

To Interrogatory No. 3, defendant answers:

(a) Up to August 1st, 1917, the number of barrels of oil run from the land in controversy, for account of this defendant was 77,605.16 ( $\frac{7}{8}$  of the total production) of the value of \$68,564.66;

(b) From August 1st, 1917, to January 1st, 1918, for account of this defendant, 1,222.56 barrels ( $\frac{7}{8}$  of the total production), of the value of \$2,413.29.

To Interrogatory No. 4, defendant answers:

Said wells Nos. 2 and 3 were run together from November, 1912, to January, 1914, (when No. 3 was abandoned); and said Wells Nos. 2 and 4 were run together from January, 1914, (when No. 4 was brought in); but the wells involved in this suit were not run in connection with other wells not involved in this suit.

To Interrogatory No. 5, defendant answers:

Yes, the runs from the wells in question were kept separate from the runs from other wells, not involved in this suit.

To Interrogatory No. 6, defendant answers:

The production as given in answer to the bill of complaint is the production from said wells, run for account of this defendant, and not the total production from said wells, and is the exact production run from said wells for account of this defendant.

To Interrogatory No. 7, defendant answers:

The number of barrels of oil run from said land for account of this defendant, up to January 1st, 1918, was 78,827.72 barrels, of the value of \$70,977.95. The value

given is exact and is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 8, defendant answers:

Seven-eighths of the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana up to the first of March, 1912, and subsequent to that date, to the Standard Oil Company of Louisiana, seven-eighths being the interest owned by this defendants.

To Interrogatory No. 9, defendant answers:

17,586.83 barrels of oil ( $\frac{7}{8}$  of the oil extracted from the land in controversy), of the value of \$11,001.25.

To Interrogatory No. 10, defendant answers:

61,240.89 barrels of oil ( $\frac{7}{8}$  of the oil extracted from the land in controversy) of the value of \$59,976.70.

To Interrogatory No. 11, defendant answers:

The total price received by this defendant for its  $\frac{7}{8}$  of the oil produced by the wells in controversy was \$70,977.95, \$11,001.25 from the Gulf Refining Company of Louisiana and \$59,976.70 from the Standard Oil Company of Louisiana (including the \$26,447.87 being held by the Standard Oil Company of Louisiana to its credit pending the result of this suit).

To Interrogatory No. 12, defendant answers:

Yes.

59 To Interrogatory No. 13, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana, for account of this defendant, was 17,586.83 barrels (or  $\frac{7}{8}$  of the total production) of the value of \$11,001.25.

To Interrogatory No. 15, defendant answers:

The quantity of oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana, for account of this defendant, up to January 1st, 1918, was 61,240.89 barrels, of the value of \$59,976.70.

To Interrogatory No. 16, defendant answers:

Yes.

To Interrogatory No. 17, defendant answers:

Yes.

To Interrogatory No. 19, defendant answers:

The quantity of oil taken away and removed by the Gulf Refining Company of Louisiana from the land involved in this suit, for account of this defendant, was 17,586.83 barrels, of the value of \$11,001.25.

To Interrogatory No. 26, defendant answers:

The actual cost to this defendant of drilling, equipping and operating said wells up to August 1st, 1917, was .....\$67,041.16;

The Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana purchased from this defendant its  $\frac{7}{8}$  of the total production of said wells (77,605.16 barrels) up to August 1st, 1917, for..... 68,564.66

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Or a net profit to August 1st, 1917, of..... \$1,523.50.

To Interrogatory No. 27, defendant answers:

No moneys were paid out as royalty by this defendant to any of the other defendants herein, but in accordance with its lease from said co-defendants, this defendant delivered as royalty in tanks, from which the oil was purchased by the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, to the credit of the said lessors, one-eighth of the oil produced from said wells, which said oil was sold by the  
60 said co-defendants to the said pipe line companies; part of which, defendant is informed, said purchasing companies have paid, and others parts of which, according to defendant's information, said purchasing companies are holding, pending the result of this suit; the amounts paid and the amounts withheld being unknown to this defendant.

The total value of the oil extracted from said land, for account of this defendant, up to January 1st, 1918, was \$70,977.95, of which amount it has received \$44,530.08, the remaining \$26,447.87 being held by the Standard Oil Company of Louisiana, to the credit of this defendant, pending the result of this suit.

W. J. HIGGINS.

Sworn to and subscribed before me on this the 13th day of April, 1918.

HILDA R. SAUER,

(Seal)

Notary Public in and for  
Allegheny County, Penna.

My Commission expires at end of next session of Senate.

Indorsed:—Answer of Pure Oil Operating Company to Interrogatories. Filed Apr. 20, 1918.

B.



61            In the District Court of the United States for  
              the Western District of Louisiana.

United States of America, Complainant,

vs.            No. 1168, In Equity.

W. H. Matthews, Et. Al., Defendant.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 8, defendant answers:

Not having information with respect to the same, this defendant cannot answer this interrogatory, except to report that up to March 1st, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company and locators to the Gulf Refining Company of Louisiana,  $\frac{7}{8}$  by the Pure Oil Operating Company and  $\frac{1}{8}$  by locators.

To Interrogatory No. 9, defendant answers:

17,586.83 barrels of oil, of the value of \$11,001.25, representing  $\frac{7}{8}$  of the production from said well to March 1st, 1912.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

20,099.23 barrels of oil, of the value of \$12,572.85.

To Interrogatory No. 16, defendant answers:  
Yes.

To Interrogatory No. 19, defendant answers:  
20,009.23 barrels of oil, of the value of \$12,572.85.

To Interrogatory No. 22, defendant answers:

The Gulf Refining Company of Louisiana is not now nor was it at the time of the purchase of the said oil engaged in the manufacture of any products of oil.

62 To Interrogatory No. 23, defendant answers:  
Gasoline, kerosene and lubricating oils.

To Interrogatory No. 24, defendant answers:

The Gulf Refining Company of Louisiana never manufactured any products from any oil extracted from the land in controversy.

To Interrogatory No. 26, defendant answers:

The Gulf Refining Company of Louisiana made no profit from the sale of any of the crude oil extracted from the land in controversy. It purchased 20,009.23 barrels of said oil for its value, \$12,572.85, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of ten cents per barrel, or \$2,009.92, which represents approximately the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company. No, products manufactured.

To Interrogatory No. 27, defendant answers:

The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil. It purchased the said oil from the following parties in the following proportions:

Pure Oil Operating Company,.....	$\frac{7}{8}$	.....	$\frac{7}{8}$
L. Hanszen, .....	$\frac{3}{8}$ of $\frac{1}{8}$		
Sam W. Mason, .....	$\frac{1}{8}$ of $\frac{1}{8}$		
D. P. Eubanks, .....	$\frac{1}{8}$ of $\frac{1}{8}$	.....	$\frac{1}{8}$
F. A. Leonard, .....	$\frac{1}{8}$ of $\frac{1}{8}$		
W. H. Matthews, .....	$\frac{1}{8}$ of $\frac{1}{8}$		
H. E. Barnes, .....	$\frac{1}{8}$ of $\frac{1}{8}$		

and paid for same in the same proportions.

No royalty is being held up.

C. R. MINOR.

Sworn to and subscribed before me on this the 15th day of March, 1918.

J. A. THIGPEN,

(Seal)

Notary Public in and for  
Caddo Parish, La.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

63 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Company, Pure Oil Refining Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

And now comes the Standard Oil Company of Louisiana, made one of the defendants in the above cause, and

availing itself of the reservations made in its answer, now moves the Court to dismiss the Bill filed in this cause as against this defendant, because said Bill does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against this defendant.

Wherefore, this defendant prays the judgment of this Court on the matter herein submitted, and that the suit against it be dismissed with cost.

J. C. PUGH & SON,  
Solicitors for Standard Oil  
Co. of La.

Indorsed: Motion to Dismiss as to the Standard Oil Company of Louisiana. Filed Feb. 27, 1918.

B.

64 Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1168 In Equity.  
W. H. Matthews, et als.

In this cause, now into Court comes the Standard Oil Company of Louisiana, one of the defendants herein, appearing through its Solicitor, Judge J. C. Pugh, and files Motion to Dismiss this suit.

Thereupon, this cause came on to be heard upon the said Motion to Dismiss and also upon the Motions to Strike out certain interrogatories—Mr. Rober A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the Complainant, and Mr. Leon R. Smith, Judge J. C. Pugh and Mr. Wm. C. Barnette, appearing as Solicitors for defendants. The said Motion of the Standard Oil Company and Motion to Strike out certain interrogatories after having been argued by counsel on either side, were submitted and thereupon the Court overruled the Motion to Dismiss, to which ruling of the Court defendants excepted. The Motion to Strike out certain interrogatories was sustained, with leave for the complainant to renew said interrogatories at such time as it may seem proper.

65

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Thursday, Shreveport, La., February 28, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1168 In Equity.  
W. H. Matthews, et als.

This cause came on this day to be heard upon the motion to dismiss heretofore filed by the Gulf Refining Com-

pany, one of the defendants herein, Mr. Robert A. Hunter, Special Assistant to the Attorney General appearing as Solicitor for the Complainant, and Mr. S. L. Herold, appearing as Solicitor for the defendant. The said motion to dismiss was argued, submitted and overruled by the Court.

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Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1168 In Equity.  
W. H. Matthews, et als.

This cause came on this day to be heard upon the Pleas filed herein by defendants—Mr. Robert A. Hunter appearing as Solicitor for complainant and Mr. S. L. Herold appearing for defendant. The matter was argued and submitted and taken under advisement by the Court.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1168 In Equity.

W. H. Matthews, et als.

In this cause, which cause had heretofore been argued by counsel and submitted, on the Pleas filed herein by defendants, counsel for either side being now present in open Court, decision is orally rendered by the Court overruling said Pleas with the right reserved to defendants to renew said pleas at the hearing of the case on the merits.

67 United States District Court, Western District  
of Louisiana.

United States,

vs.

No. 1168.

W. H. Matthews, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.



No. 1168 Plff. J.  
R. B. Cook, Stenographer.

Suit No. 1168, U. S. vs. W. H. Matthews, et al.

Statement of Oil Run from Land in Suit by the Gulf Refining Co. of Louisiana from August, 1911, to February 27, 1912, inclusive, Division of Oil and Value.

		Bbls.	Value.
Total Oil Run .....		20,099.23	\$12,572.85
L. Hanszen McMullen .....	3/64	942.12	589.35
Sam W. Mason .....	1/64	314.05	196.45
D. P. Eubanks .....	1/64	314.05	196.45
F. A. Leonard .....	1/64	314.05	196.45
W. H. Matthews .....	1/64	314.05	196.45
H. E. Barnes .....	1/64	314.05	196.45

Total Royalty paid by the Gulf Refining Co. of La. ....		2,512.40	\$1,571.60
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Pure Oil Operating Co. ....	7/8	17,586.83	11,001.25
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Statement of the Oil Run from the Land in Suit by the Standard Oil Co. of Louisiana from February 27, 1912, to December 31, 1917, Division of Oil and Value.

		Bbls.	Value.
Total oil run .....		69,989.59	\$68,544.98
L. Hanszen McMullen .....	3/64	3,280.79	3,213.13
F. A. Leonard .....	1/64	1,093.62	1,071.05
D. P. Eubank .....	1/64	1,093.52	1,070.99

W. H. Matthews .....	1/64	1,093.64	1,071.05
Natalie Oil Co. ....		157.08	242.53
H. E. Barnes and .....	1/64		
H. L. Heilperin .....		939.43	828.48
Sam W. Mason .....	1/64	1,093.61	1,071.05
Total Royalty paid by the Standard Oil Co. of La.		8,748.69	\$8,568.28
Pure Oil Operating Co. ....	7/8	61,240.99	\$59,976.70
Grand Total Royalty .....		11,261.09	\$10,139.88
Grand Total Paid Pure Oil Operating Co. ....		78,827.73	\$70,977.95
Total Oil Produced on Land and Value .....		90,088.82	\$81,117.83
Total cost of drilling, equipping Wells 2, 3 and 4. No. 1 not drilled. No. 5 not on land in suit .....			\$29,283.08
Total cost of operating Wells 2, 3 and 4 to December 31, 1917 .....			\$30,293.28
Total cost of drilling, equipping and operat- ing wells on this land to Dec. 31, 1917			\$59,576.36
Total value of oil produced to Dec. 31, 1917			\$81,117.83
Cost of drilling, equipping and operating ..			\$59,576.36
Net value from land in suit .....			\$21,541.47
Total amount received and due the Pure Oil Operating Co. to Dec. 31, 1917 .....			\$70,977.95

Cost of drilling, equipping and operating ..	\$59,576.36
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Net value received by the Pure Oil Operating Co. ....	\$11,401.59
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Drilling on No. 2 began June 17, 1911.

Well No. 1 was not drilled.

69

P-2.

## Hanszen-Matthews.

Cost of Drilling, Equipping and Operating to December 31st, 1917.

No. 2. Cost of drilling and equipping ....	\$11,946.82
No. 2. Cost of operating Aug., 1911 to Dec., 1917 .....	16,198.49
No. 3. Cost of drilling and equipping ....	7,504.21
Cost of operating June, 1912, to Dec., 1913 .....	3,997.03
No. 4. Cost of drilling and equipping ....	9,832.05
Cost of operating Jan., 1914, to Dec. 31, 1917 .....	10,097.76
Total .....	\$59,576.36

Well did not produce.

Total Including No. 5.

	Commenced	Completed
Well No. 1	July 15, 1910	Sept. 10, 1910.
Well No. 5	Nov. 15, 1913	Jan. 17, 1914.

Filed Jan. 21, 1919.

70        In the District Court of the United States for  
             the Western District of Louisiana.

United States of America, Complainant,

vs.        No. 1168 In Equity.

W. H. Matthews, et al., Defendant.

For defendant, Standard Oil Company of Louisiana,  
it is urged for exception to the Report of Special Master:

First: That he should have given judgment against its co-defendants for the amount shown to have been paid them for the value of oil taken from the property in dispute, as they are all co-defendants and were called in warranty by this defendant, and as such a judgment would avoid a multiplicity of suits and finally settle the issues between the parties.

Second: That the Special Master erred in allowing interest from the filing of his Report; that interest should only be allowed from the finality of any judgment which may be rendered herein.

Wherefore, it prays that these exceptions be sustained and the recommendations of the Special Master be revised accordingly.

J. C. PUGH & SON,  
Attorneys for Defendant, Standard Oil Company of La

Indorsed:—Exception to Report of Special Master.  
Filed Jan. 23, 1919.

71 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, et al., Defendants.

Now come W. H. Matthews, Mrs. Lydia Hanszen MacMullen, heirs and legal representatives of F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has reported and certified that the property in controversy at the date of the location thereof was withdrawn from entry under the placer mining laws of the United States; whereas he should have reported and certified that the property in controversy was not at that date so withdrawn.

2.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

**THIGPEN & HEROLD,**  
Solicitor for Defendants.

Indorsed:—Exceptions of W. H. Matthews, Mrs. Lydia H. MacMullen, Heirs and legal representatives of F. A. Leonard, Sam W. Mason, H. Earl Marnes, D. P. Eubank, and J. A. Thigpen and S. L. Herold, liquidators of the Natalie Oil Co. to the Report of the Special Master. Filed Jan. 30, 1919.

72 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1168, In Equity.  
W. H. Matthews, et al., Defendants.

Now comes the Pure Oil Operating Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has reported and certified that the property in controversy at the date of the location thereof was withdrawn from entry under the placer mining laws of the United States; whereas he should have reported and certified that the property in controversy was not at that date so withdrawn.

## 2.

That the Master has reported and certified that there should be judgment against this defendant for the value of the oil extracted from the property; whereas he should have reported and certified that no money judgment should be rendered against this defendant.

## 3.

That the Master has reported and certified that this defendant should be held liable in solido with the mineral locators, to whom royalties were paid, for the amount and value of such royalty oil; whereas the Master should have reported and certified that even if judgment should be rendered against this defendant in any sum, this defendant should not be condemned for the value of said royalties.

## 4.

That the Master has reported and certified a solidary liability against this defendant and its lessors; whereas the Master should have reported and certified that even if a money judgment should be rendered against this defendant, and even though it should be condemned in solido with the lessors, that the liability of this defendant and should be held to be merely secondary, and an express provision made for its recovery back from its lessors of any sums paid by it on their account.

## 5.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

judgment rendered against it, at the rate of five (5.) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for the Pure Oil  
Operating Company.

Indorsed:—Exception of the Pure Oil Operating Company to the Report of the Special Master. Filed Jan. 30, 1919.

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74      In the District Court of the United States for  
                 the Western District of Louisiana.

United States of America, Plaintiff,  
   vs.                    No. 1168 In Equity.  
W. H. Matthews, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has reported and certified that this defendant should be held liable for the value of the oil



purchased by it from the Pure Oil Operating Company; whereas the Master should have reported and certified that this defendant merely purchased oil produced by the Pure Oil Operating Company, for which it has paid and, therefore, could not be liable to a third person therefor.

2.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for the Gulf Refining  
Company of Louisiana.

75 Indorsed:—Exceptions of the Gulf Refining Company of Louisiana to the Report of the Special Master. D. Edward Greer, Thigpen and Herold, Solicitors. Filed Jan. 30, 1919.

76 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,

vs.

No. 1168.

W. H. Matthews, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court being plaintiff's exhibits "A", "B", "C", "D", "E", "F-1, 2, 3, 4, 5", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", which said exhibits were by agreement of counsel (record p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included T. 20 N., R. 16 W., and prohibited mineral locations on the

public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master  
77 in his report.

2. As stated in the Master's report, the mineral location in this cause was made April 24, 1910. The testimony shows that no wells were drilled or begun and no work done on the land, leading to the discovery of oil, until the year 1911. (Testimony of S. L. Cronin, witness for defense, record, pp. 47 to 50, inclusive.) Defendants contended that a derrick for well No. 1 was built in May or June, 1910, but the testimony of S. L. Cronin, witness for defendants (pp. 47 to 50, inclusive), shows that the Pure Oil Operating Company did not drill and had no intention of drilling "Well No. 1", and merely erected the derrick for the purpose of giving the appearance of possession. The first well drilled on the land in 1911 was placed upon a location different from that occupied by the derrick above mentioned. Plaintiff avers that the drilling of said well, and the removal of oil from the said land, by the defendants, were in violation of both of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precluded a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. There was affirmative evidence in the record showing that the defendants were not in good faith in extracting and removing the oil from the land in controversy, because the record shows that the defendants, including the Pure Oil Operating Company (which said

Company asserted counterclaim allowed by the Master), gave bonds to the Standard Oil Company of Louisiana to protect said Company against adverse claims to the property and to the oil. The bond executed by the Pure Oil Operating Company, for the sum of \$50,000.00, contains a specific agreement to indemnify and hold harmless the Standard Oil Company of Louisiana from liability to the United States of America (see bond attached to answer of the Standard Oil Company of Louisiana to the bill of complaint and answer of the said Standard Oil Company of Louisiana to the interrogatories filed herein).

78           5. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, and likewise of the withdrawal order of July 2, 1910, (see testimony of Cronin, witness for defendants, pp. 42 and 46, and of Sam W. Mason, one of the mineral locators, p. 37). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against defendants, as follows, to-wit:

(a) Against the Pure Oil Operating Company and the Gulf Refining Company of Louisiana, in solido, for amount of oil produced by Pure Oil Operating Co. and delivered to the Gulf Refining Company of Louisiana, less royalties of \$1571.60, as shown by the Master's report .....

\$11,001.25

(b) Against the Pure Oil Operating Co. and the Gulf Refining Company of Louisiana, in solido, and each of the royalty claimants of the Gulf Refining Company of Louisiana, in solido with said companies, for the amount paid each of said royalty claimants, as shown by the Master's report, aggregating \$ 1,571.60

(c) Against the Standard Oil Co. of Louisiana and the Pure Oil Operating Co., in solido, for the amount of oil produced by the Pure Oil Operating Co., and delivered by the Pure Oil Operating Co. to the Standard Oil Co. of Louisiana, less royalties of \$8,568.28, all as shown by the Master's report, amounting to the sum of ..... \$59,976.70

(d) Against the Standard Oil Company of Louisiana and the Pure Oil Operating Co., in solido, and each of the royalty claimants of the Standard Oil Company of Louisiana, in solido with said companies, for the amount paid to each of said royalty claimants, as shown by the Master's report, aggregating \$ 8,568.28

Said sums aggregating \$81,117.83, being the total value of the oil extracted and removed by defendants, as shown by the Master's report.

79 Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary and for general relief.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

80 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia M. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Number Six (6) of Section Ten (10) in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, containing Thirty-one and sixty-seven hundredths (31.67) acres, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana, be

and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the mineral location made by defendants, W. H. Matthews and Lydia Hanszen, recorded April 28, 1910, in Book 59, page 369, and the lease made by said locators April 30, 1910, recorded in Book 59, page 387, to E. H. Jennings and transfer of said lease by E. H. Jennings, January 6, 1911, to the Pure Oil Operating Company, recorded in Book 66, page 65, said instruments having been recorded on the Conveyance Records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and, to that extent, the said mineral locations and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, W. H. Matthews, Mrs. Lydia H. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up

any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, in solido, and the said  
82 defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eleven Thousand Four Hundred and One and 59/100 (\$11,401.59) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Eighty-nine and 35/100 (\$589.35) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Sam W. Mason in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together



with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and F. A. Leonard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

83 XI. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and W. H. Matthews, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred

and Ninety-six and  $45/100$  (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thousand Two Hundred and Thirteen and  $13/100$  (3,213.13) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid

XIV. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana, and F. A. Leonard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and Seventy-one and  $5/100$  (\$1,071.05) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XV. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Dillard P. Eubanks, in solido, and the said defendants are hereby condemned and  
 84      ordered to pay to plaintiff, the full sum of One  
          Thousand and Seventy-one and  $99/100$  (\$1071.  
          99) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVI. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and W. H. Matthews, in solido, and the said defendants are hereby condemned and or-

dered to pay to plaintiff, the full sum of One Thousand and Seventy-one and 5/100 (\$1,071.05) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and the Natalie Oil Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and Forty-two and 53/100 (\$242.53) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eight Hundred and Twenty-eight and 48/100 (\$828.48) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIX. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and Seventy-one and 5/100 (\$1,071.05) Dollars, together with five per cent per annum interest thereon  
85 from January 11, 1919, until paid.

XX. That the rights of the Standard Oil Company of Louisiana, the Gulf Refining Company of Louisiana and the Pure Oil Operating Company against each other and

against the several persons to whom royalties were paid, by them, be reserved in accordance with the recommendations set forth in the Master's report.

XXI. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XXII. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XXIII. That pending delivery thereof to the United States of America John H. Eastham a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentali-

ties thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Ten Thousand (\$10,000) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as Receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XXIV. That the rights of the Standard Oil Company of Louisiana against its warrantors be, and the same are hereby, reserved.

87            Thus done, read and signed in open Court this  
4th day of August, 1919.

RUFUS E. FOSTER,  
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.

B

88            In the District Court of the United States for  
the Western District of Louisiana.

United States of America,

v.            No. 1168, In Equity.

W. H. Matthews, et al.

To the Honorable, the Judge of the District Court of the  
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States  
of America, plaintiff in the above numbered and entitled  
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final de-  
cree in said cause, and that in said decree there was, in  
part, error greatly to the prejudice and injury of plain-  
tiff, as will more fully appear by the assignment of errors  
filed herewith. Plaintiff desires to take an appeal from  
said decree to the United States Circuit Court of Appeals  
of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed  
to plaintiff in this cause from this Court to the United  
States Circuit Court of Appeals for the Fifth Circuit,

and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

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## ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,  
United States Judge.

Filed Jan. 3, 1920.

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90      ASSIGNMENT OF ERRORS ON PLAINTIFF'S  
APPEAL.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

## 1.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Pure Oil Operating Company for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

## II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated respectively December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said wells were drilled after the issuance of both of said withdrawal orders, in violation thereof, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said wells.

## III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil.



The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the wells in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said wells be deducted and excluded from any allowance that may be made defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Appeal, order allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

92 In the District Court of the United States, for  
The Western District of Louisiana.

United States of America,  
Plaintiff,  
vs. No. 1168, In Equity.

W. H. Matthews, et al.  
Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

All the defendants feeling themselves aggrieved by the  
decree made and entered in this cause on the 12th day of  
August, 1919, do hereby appeal from said decree to the  
Circuit Court of Appeals for the Fifth Circuit for the  
reasons specified in the assignment of errors, which is  
filed herewith, and now pray that their appeal be allowed  
and that citation issue as provided by law, and that a  
transcript of the record, proceedings and papers on which  
said decree was based, duly authenticated, may be sent  
to the said United States Circuit Court of Appeals for  
the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper or-  
der touching the security to be required of them to per-  
fect said appeal be made.

THIGPEN & HEROLD,  
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed upon the defendants giving bond as required by law in the sum of Two Thousand Dollars.

RUFUS E. FOSTER,

United States District Judge.

Jan. 10/1920.

Indorsed: Motion & Order for Appeal. Filed Jan. 12, 1920.

B.

93

BOND ON APPEAL.

In the District Court of the United States, for the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1168, In Equity.

W. H. Matthews, et al.

Defendants.

Know all men by these presents:

That we, W. H. Matthews, Lydia H. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Co., Pure Oil Operating Co., Gulf Refining Co. of La., and Standard Oil Co. of La., as principal, and the National Surety Co., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the

full sum of Two Thousand Dollars, for the payment of which well and truly to be made, we hereby bind ourselves our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 5th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and W. H. Matthews, et al were defendants, numbered on the Equity Docket 1168, a decree was rendered and signed against the said W. H. Matthews, et al, and the said W. H. Matthews, et al having obtained an appeal to the United States Circuit Court, of Appeals for the Fifth Circuit;

Now if the said W. H. Matthews, et al shall prosecute such appeal to effect and answer all damages and costs if they fail to make their pleas good, then the above obligation to be void; otherwise to remain in full force and effect.

94

W. H. MATTHEWS,  
By S. L. HEROLD, Atty.  
LYDIA H. McMULLEN,  
By S. L. HEROLD, Atty.  
J. A. McMULLEN,  
By S. L. HEROLD, Atty.  
F. A. LEONARD,  
By S. L. HEROLD, Atty.  
SAM W. MASON,  
By S. L. HEROLD, Atty.

H. EARL BARNES,  
 By S. L. HEROLD, Atty.  
 DILLARD P. EUBANKS,  
 By S. L. HEROLD, Atty.  
 NATALIE OIL CO.  
 By S. L. HEROLD, Atty.  
 PURE OIL OPERATING CO.  
 By S. L. HEROLD, Atty.  
 GULF REFINING CO. OF LA.  
 By S. L. HEROLD, Atty.  
 STANDARD OIL CO. OF LA.  
 By J. C. PUGH,  
 S. L. H. Atty.  
 NATIONAL SURETY CO.  
 By MERIWETHER-MAYO INSUR-  
 ANCE AGENCY,  
 By W. T. MAYO, Vice Pres.  
 Attys. in fact.

Approved:

RUFUS E. FOSTER,  
 U. S. Dist. Judge.

Indorsed: Appeal Bond. Filed Jan. 12, 1920.  
 B.

95 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1168, In Equity.

W. H. Matthews, et al,

Defendant.

And now, on this the 10th day of January, 1920, come all the defendants, by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, is erroneous and unjust to the defendants; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 28th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

96

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant Pure Oil Operating Company, the amounts paid to its co-defendants as royalties.

## Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Pure Oil Operating Company, in addition to the value of all the oil extracted from the property, less cost of production.

## Tenth.

That the Court erred in condemning defendants Gulf Refining Co. of Louisiana and Standard Oil Co. of Louisiana for the value of the oil purchased by them respectively from their co-defendants.

## Eleventh.

That the Court erred in holding the mere purchaser of oil produced and reduced to possession by the bona fide possessor of the land, by reason of such purchase, to the plaintiff because adjudged the owner of the land from wells on which such oil had been produced.

97           Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed: Assignment of Errors. Filed Jan. 10, 1920.  
B.



## STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

v.

No. 1168.

W. H. Matthews, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1170, and 1171, were consolidated in the District Court for trial with the case entitled United States v. Sam W. Mason, et al, No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States vs Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled *United States v. Sam W. Mason, et al*, No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by  
 99 plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Motion to dismiss on behalf of the Gulf Refining Company of Louisiana.
3. Answer of W. H. Matthews, et al.
4. Amended Answer of W. H. Matthews, et al.
5. Plaintiff's reply to defendants set off and counter-claim.

6. Plaintiff's amended reply to defendants setoff and counterclaim.

7. Plaintiff's reply to setoff and counterclaim asserted by Pure Oil Operating Company in amended answer.

8. Answer of the Standard Oil Company of Louisiana, and bonds and exhibits thereto annexed.

9. Interrogatories propounded by plaintiff to Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Co. of Louisiana.

10. Motion of Standard Oil Company of Louisiana to strike out interrogatories, Nos. 25 and 26.

11. Answer of Standard Oil Company of Louisiana to interrogatories.

12. Answer of Pure Oil Operating Company to interrogatories.

13. Answer of Gulf Refining Company of Louisiana to interrogatories.

14. Motion to dismiss filed by the Standard Oil Company of Louisiana.

100      15. Order of Court overruling motion to dismiss and sustaining motion to strike out certain interrogatories.

16. Order appointing E. H. Randolph, Special Master in Chancery.

17. Pages 1 and 2 of Statement of James W. Neal, Special Agent of the General Land Office, marked plain-

tiff's J, showing quantity and value of oil produced, royalties paid and costs of drilling and operating the wells, together with all other information given in said statement.

18. Exceptions of Standard Oil Company of Louisiana to Master's report.

19. Exceptions of W. H. Matthews, et al, to Master's report.

20. Exceptions of Pure Oil Operating Company to Master's report

21. Exceptions of Gulf Refining Company of Louisiana to Master's report.

22. Plaintiff's exceptions to Master's report.

23. Final decree.

24. Plaintiff's petition for appeal, order allowing same and assignment of errors.

25. Defendants' petition for appeal, order allowing same and assignment of errors, and bond on appeal

26. This stipulation.

Thus done and signed this 12 day of May, 1920.

ROBERT A. HUNTER,  
Attorney for Plaintiff.

J. C. PUGH,  
THIGPEN & HEROLD,  
Attorneys for Defendants.

Filed May 14, 1920.

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## CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one-hundred pages contain and form a full, true and correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein the United States of America is plaintiff and W. H. Matthews, et al are defendants, No. 1168 in Equity on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on this the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk,  
United States District Court,  
Western District of Louisiana.

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Citation omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from Minutes of February 24, 1921.

No. 3545.

W. H. MATTHEWS et als.  
versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

*Opinion of the Court.*

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,  
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,  
versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western  
District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

## No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

## No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.  
Reversed in part.



*Judgment.*

Extract from Minutes of May 17th, 1921.

No. 3545.

W. H. MATTHEWS et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

*Petition for Appeal and Order Allowing Same.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, W. H. Matthews, Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation

issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

*Solicitors for said Appellants.*

*Order.*

Let the foregoing petition be granted and the appeal be allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of One Hundred and Twenty Thousand Dollars (\$120,000.00).

June 7th, 1921.

(Signed)

R. W. WALKER,

*Judge U. S. Circuit Court of Appeals.*

*Assignment of Errors.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

## Third.

The Court erred in holding defendants to be trespassers.

## Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

## Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

## Sixth.

The Court erred in holding that defendants did not act in good faith.

## Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

## Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

## Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

## Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

## Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

## Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

## Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Pure Oil Operating Company, the amount of oil delivered by it to its co-defendants as royalty.

## Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

## Fifteenth.

The Court erred in condemning defendants Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana for the value of the oil purchased by them, respectively, from their co-defendants.

## Sixteenth.

The Court erred in holding the mere purchaser of oil produced and reduced to possession by the actual possessor of the land to be liable to plaintiff by reason of such purchase because plaintiff may have been herein adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

*Solicitors for Defendants.*

*Appeal Bond.*

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS, Mrs. LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, W. H. Matthews, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, as principal, and National Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, appellee, in the above numbered and entitled cause in the full sum of One Hundred and Twenty Thousand (\$120,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, La., on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court, wherein the United States of America was appellee and cross-appellant and W. H. Matthews, Mrs. Lydia H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3545, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below, or any of them, with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said W. H. Matthews, Mrs. H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said W. H. Matthews, Mrs. Lydia H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) W. H. MATTHEWS,  
By S. L. HEROLD,  
*Atty.*

(Signed) MRS. LYDIA HANSZEN MACMULLEN,  
By S. L. HEROLD,  
*Atty.*

(Signed) J. A. MACMULLEN,  
By S. L. HEROLD,  
*Atty.*

(Signed) F. A. LEONARD,  
By S. L. HEROLD,  
*Atty.*

(Signed) SAM W. MASON,  
By S. L. HEROLD,  
*Atty.*

(Signed) H. EARL BARNES,  
By S. L. HEROLD,  
*Atty.*

(Signed) DILLARD P. EUBANK,  
By S. L. HEROLD,  
*Atty.*

(Signed) NATALIE OIL COMPANY,  
By S. L. HEROLD,  
*Atty.*

(Signed) GULF REFINING COMPANY OF  
LOUISIANA,  
By S. L. HEROLD,  
*Atty.*

(Signed) STANDARD OIL COMPANY OF  
LOUISIANA,  
By S. L. HEROLD,  
*Atty.*

(Signed) PURE OIL OPERATING COMPANY,  
By S. L. HEROLD,  
*Atty.*

(Signed) NATIONAL SURETY COMPANY,  
By LOUIS COIRON,  
*Res. Vice-President.*

Countersigned by  
 (Signed) LOUIS VALE,  
*Res. Asst. Secty.*

[SEAL.]

Approved this 7th day of June, 1921.  
 (Signed)

R. W. WALKER,  
*United States Circuit Judge.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 121 to 130 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3545, wherein W. H. Matthews and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 120, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit Court of Appeals.*

THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,  
 Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to — sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein W. H. Matthews, Lydia Hanszen MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining

Company of Louisiana, and Standard Oil Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3545 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said W. H. Matthews and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,  
*United States Circuit Judge.*

[Endorsed:] No. 3545. United States Circuit Court of Appeals, Fifth Circuit. W. H. Matthews et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

Endorsed on cover: File No. 28,351. U. S. Circuit Court Appeals, 5th Circuit. Term No. 396. W. H. Matthews, Lydia Hansen MacMullen, J. A. MacMullen et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,351.





# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, [REDACTED] 1922

No. [REDACTED] 115

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DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN,  
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

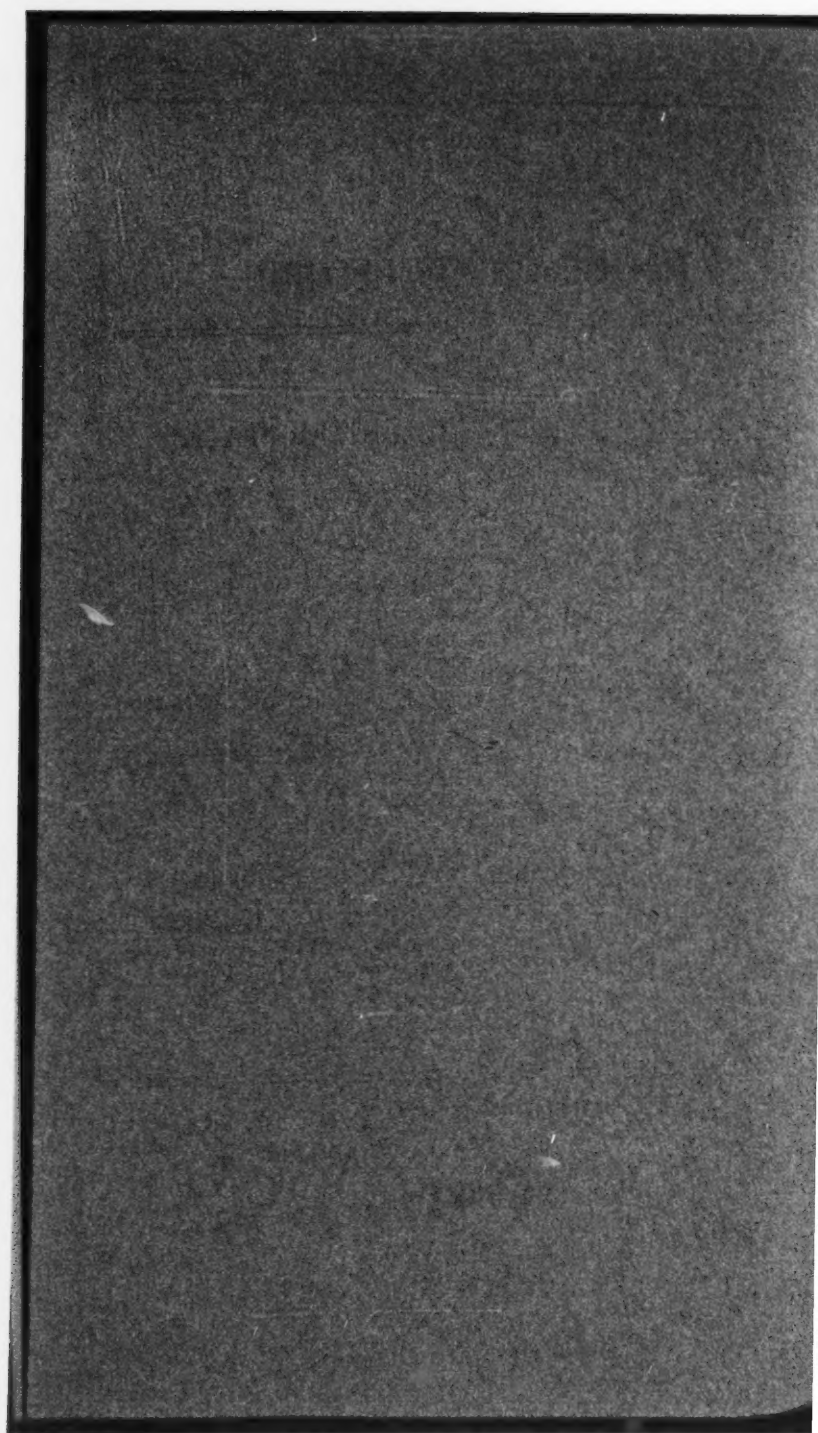
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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

---

FILED JULY 2, 1921.

(28,352)



(28,352)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 397.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN,  
ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, towit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3546, as follows:



UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,  
versus No. 1170 In Equity.

D. P. EUBANK, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants, and Cross Appeal taken by the  
Plaintiff, to the United States Circuit Court of Ap-  
peals, Fifth Circuit, New Orleans, Louisiana.

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1 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1170, In Equity.

Dillard P. Eubank, John B. Files, Eugene Hanszen, T.  
D. Starnes, J. L. Urquhart, Gulf Refining Company  
of Louisiana, Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert  
A. Hunter, Special Assistant to the Attorney General,  
acting herein under the direction and by the authority of



the Attorney General of the United States, brings this bill of complaint against Dillard P. Eubank, John B. Files, citizens of Louisiana and residents of the City of Shreveport, in the Western District of said State; Eugene Hansen, a citizen of Texas and a resident of the City of Dallas, in the Northern District of said State; T. D. Starnes, J. L. Urquhart, citizens of Texas and residents of the City of Greenville, in the Northern District of said State; and the Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and thereupon complains and shows unto your Honor:

# I.


That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which had theretofore been surveyed and was known as the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section Five (5) Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, together with a strip of land lying between the traverse line of said Lots and the mean high-water line of 1812 and 1839 of James Bayou, as shown by a plat of survey approved March 28, 1917, by Clay  
2 Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of



4

any kind under the general land laws, or mineral laws, of the United States.

### III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph 3 I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Gibbs No. 1, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

### IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdrawal said land from location, entry and other appropriation.

### V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of an illegal

mineral location made by one J. C. Gibbs (now deceased) pretending to act under the placer mining laws of the United States, which pretended location was recorded April 18, 1910, in Book 59, page 338, of the Conveyance Records of Caddo Parish, Louisiana. That said pretended mineral location embraced eleven and ninety-four hundredths (11.94) acres, and is in words and figures as follows:

J. C. Gibbs  
to                      Notice of Mining Location.  
The Public.

To whom it may concern:

Notice is hereby given that the undersigned, a citizen of the United States, over the age of twenty-one years, having complied with the requirement of Chapter VI, of Title 32 of the Revised Statutes of the United States, and the local mining laws, rules and regulations, concerning the location under the placer mining laws of the United States, containing petroleum or other mineral oil having located 11.94 acres of land located in Caddo Parish, Louisiana, described as follows:

Beginning 1980 ft. south and 660 ft. east of NW corner of NE $\frac{1}{4}$  Section 5, T. 20 N. R. 16 thence south 53° E. 595 ft., thence south 59° 33' E. 227.5 ft.; thence South 53° 20' E. 317 ft.; thence east 90 ft.; thence north 49° 10' E. 322.5 ft.; thence north 7°20' E. 453.5 ft.; thence west 1320 ft. to place of beginning, and I hereby declare my intention of complying with the law relative to working and holding the same. A survey having been  
4                      made and marked at each corner and a notice  
                        posted at every corner thereof in a conspicuous  
place.

Witness my hand this 31st day of March, 1910.  
(Signed) J. C. GIBBS

Witness:

JIM TODD,  
JOE MURPHY.

That the said Gibbs himself made no effort to explore said land, or drill for oil or gas thereon, but on April 2, 1910, executed a mineral lease thereof to defendant, Gulf Refining Company of Louisiana, as per act recorded in Conveyance Book 59, page 295, of the records of said Parish and State.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and lease, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and defendant, Gulf Refining Company of Louisiana drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it has appropriated to its own use.

That the said Gulf Refining Company of Louisiana paid to the other defendants herein, who, plaintiff alleges, acquired an interest in the mineral location of the said J. C. Gibbs, certain sums as royalties, the amount of which is to the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from said land, appropriated as aforesaid, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought.

## VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting  
5 claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

## VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

## VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location made on March 31, 1910, by J. C. Gibbs, as per act recorded in Conveyance Book 59, page 338, and the lease made by the said J. C. Gibbs to the Gulf Refining Company of Louisiana, on April 2, 1910, by act recorded in Conveyance Book 59, page 295, of the records of Caddo Parish, Louisiana, be declared null and void, and that same be cancelled and annulled,

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land,  
 6 or any part thereof, and from creating any cloud upon the plaintiff's title to same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease or same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to Dillard P. Eubank and John B. Files, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana, and

7 served as provided by law, directing said defendants to appear and answer to this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,  
Special Assistant to the At-  
torney General.



## AFFIDAVIT.

United States of America,  
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and  
says:

That he is a Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28 day of July,  
1917.

C. W. CALHEATT,  
Deputy Clerk, U. S. District Court,  
Northern District of California.

## ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana are not inhabitants of the Western District of Louisiana, and are domiciled outside of said District,

It is, therefore, ordered that the said absent defendants be, and they are hereby directed to appear, and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants respectively, wherever found. This August 8th, 1917.

GEO. WHITFIELD JACK,  
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.  
B.

9 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.  
D. Starnes, J. L. Urquhart, Gulf Refining Company  
of Louisiana, Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

The defendant, T. D. Starnes, now and at all times  
hereinafter saving and reserving to himself all manner  
of benefit or advantage all exception or otherwise that  
may be had or taken to the many errors, uncertainties and  
imperfections in the bill of complaint herein for answer  
thereto, or to so much thereof as defendant is advised is  
material or necessary for him to answer, says:

## 1.

Defendant, T. D. Starnes, neither admits nor denies  
the allegations set forth in paragraph one of the bill of  
complaint herein.

## 2.

Defendant, T. D. Starnes, neither admits nor denies the  
allegations complained of in paragraph two of plaintiff's  
bill of complaint, but he says, upon information and be-  
lief, that the order referred to therein was not in force  
and effect until the 2nd day of July, 1910, at  
which said time defendant's original grantor had  
located said land therein described in the 18th

day of April, 1910, and prior to the time when said lands were withdrawn by the President of the United States from location.

## 3.

In answer to the third paragraph of plaintiff's bill of complaint the defendant, T. D. Starnes, neither admits nor denies the allegations therein contained, except as set out in his answer to the second paragraph of the bill of complaint herein.

## 4.

In answer to the fourth paragraph of plaintiff's bill of complaint, the defendant, T. D. Starnes, says, upon information and belief that J. C. Gibbs, the original grantee from the plaintiff, was a bona fide occupant of the lands described in paragraph one of plaintiff's bill of complaint; that he is not advised as to whether or not actual prosecution of the work, leading to the discovery of oil and gas, had begun on the 2nd day of July, 1910, as alleged by plaintiff in paragraph two of said bill of complaint.

## 5.

In answer to the allegations contained in the fifth paragraph of said bill of complaint, the defendant, T. D. Starnes, admits that portion of same, setting out the location of the land in controversy by J. C. Gibbs on the 31st day of March, 1910; that the defendant, Starnes, is not advised at what date an exploration for oil or gas was begun on said lands, but, upon information and belief, says that the Gulf Refining Company, grantee of J. C. Gibbs, immediately, or soon after the 2nd day of

April, 1910, began exploration for oil and gas on said lands described by the plaintiff in paragraph one of its bill of complaint. Defendant, Starnes, denies that he received any very considerable amount of money in the way of royalties; that he received at two different times small amounts from the Gulf Refining Company of Louisiana, the amount of which he does not now remember, but, upon information and belief, he says that said sum was less than \$100.00.

## 6.

In answer to paragraph six of plaintiff's bill of complaint, defendant, Starnes, denies that he is unlawfully trespassing upon the lands described in plaintiff's bill of complaint, but admits that he is asserting title or interest in said lands.

## 7.

In answer to paragraph seven of plaintiff's bill of complaint, defendant, T. D. Starnes, says that he is not advised as to the proceeds realized from the sale of oil taken from said lands by the Gulf Refining Company of Louisiana, but he does say that he received a very small sum in the way of royalties—\$100.00 or less.

For all of which reasons defendant, T. D. Starnes, says that the plaintiff is not entitled to the relief sought.

Wherefore, he prays that plaintiff take nothing by this suit, that said bill of complaint be dismissed and that he go hence without day and recover his costs.

T. D. STARNES,

Attorneys for Defendant, T.  
D. Starnes.

Indorsed:—Original Answer of Defendant, T. D. Starnes. Filed Sep. 26, 1917.

---

12 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1170 In Equity.

Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, Gulf Refining Company of Louisiana, Defendants.

The defendant, J. L. Urquhart, now and at all times hereinafter excepting and reserving to himself all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in the bill of complaint herein for answer thereto, or to so much thereof as defendant is advised is material or necessary for him to answer, says:

1.

Defendant, J. L. Urquhart, neither admits nor denies the allegations set forth in paragraph one of the bill of complaint herein.

2.

Defendant, J. L. Urquhart, neither admits nor denies the allegations complained of in paragraph two of plaintiff's bill of complaint, but he says, on information and belief, that the order referred to therein was not in force

and effect until the 2nd day of July, 1910, at which said time defendant's original grantor had located said land therein described on the 18th day of April, 1910, and prior to the time when said lands were withdrawn  
 13 by the President of the United States from location,

## 3.

In answer to the third paragraph of Plaintiff's bill of complaint, the defendant, J. L. Urquhart, neither admits nor denies the allegations therein contained, except as set out in his answer to the second paragraph of the bill of complaint herein.

## 4.

In answer to the fourth paragraph of plaintiff's bill of complaint, the defendant, J. L. Urquhart, says, upon information and belief, that H. C. Gibbs, the original grantee from the plaintiff, was a bona fide occupant of the lands described in paragraph one of plaintiff's bill of complaint; that he is not advised as to whether or not actual prosecution of the work leading to the discovery of oil had begun on the 2nd day of July, 1910, as alleged by plaintiff in paragraph two of its bill of complaint.

## 5.

In answer to the allegations contained in the fifth paragraph of said bill of complaint, the defendant, J. L. Urquhart, admits that portion of same, setting out the location of the land in controversy by J. C. Gibbs on the 31st day of March, 1910; that defendant, Urquhart, is not advised at what date an exploration for oil or gas was begun on said lands, but, upon information and belief, says that the Gulf Refining Company, grantee of J. C. Gibbs, immediately or soon after the 2nd day of April,

1910, began exploration for oil and gas on said lands described by the plaintiff in paragraph one of its bill of complaint. The defendant, Urquhart, denies that he received any very considerable amount of money in the way of royalties; that he received at two different times small amounts from the Gulf Refining Company of Louisiana, the amount of which he does not now remember, but, upon information and belief, he says that said sum was less than \$200.00.

## 6.

In answer to paragraph six of plaintiff's bill of complaint, defendant, J. L. Urquhart, denies that he is unlawfully trespassing upon the lands described in plaintiff's bill of complaint, but admits that he is asserting title or interest in said lands.

## 7.

In answer to paragraph seven of plaintiff's bill of complaint, defendant, J. L. Urquhart, says that he is not advised as to the proceeds realized from the sale of oil taken from said lands by the Gulf Refining Company of Louisiana, but he does say that he received a very small sum in the way of royalties, towit: \$200.00 or less.

For all of which reasons defendant, J. L. Urquhart, says that the plaintiff is not entitled to the relief sought.

Wherefore, he prays that plaintiff take nothing by this suit; that said bill of complaint be dismissed, and that he go hence without day and recover his costs.

J. L. URQUHART,  
SHERILL & STARNES,

Attorneys for Defendant, J. L.  
Urquhart.



Indorsed:—Defendant, Urquhart's Original Answer.  
Filed Sept. 29, 1917.

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15 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1170 In Equity.  
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.  
D. Starnes, J. L. Urquhart, Gulf Refining Company  
of Louisiana, Defendants.

The joint and several answer of all the defendants in  
the above entitled and numbered cause.

And now come all of said defendants, and answer the  
bill of complaint as follows:

#### I.

The ownership by the United States, on and before De-  
cember 15th, 1908, of the South Half of the Northeast Quar-  
ter of Section Five (5), township and range referred to,  
together with a strip of land lying between the traverse  
line of what is now designated as Lots Three and Four,  
and the mean high water line of 1812 and 1839 of James  
Bayou, is admitted; but it is denied that plaintiff is now  
the owner thereof or entitled to the possession of said  
land or of the minerals therein contained.

#### II.

It is denied that the presidential withdrawal of Decem-  
ber 15th, 1908, affected the right of any duly qualified

citizen to locate said property under the mining laws of the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew there-

16 after all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

### III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the well referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said well was drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority or in bad faith or to the injury of plaintiff.

## IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

## V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by J. C. Gibbs; but they deny that such location was a pretended  
17      one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Defendants admit the execution of lease by said locator to the Gulf Refining Company of Louisiana, as recorded in Conveyance Book 59, page 295, of the records of Caddo Parish, Louisiana; and show that under said lease, lawfully made and entered into, said lessee proceeded in good faith and according to the terms of its said contract to drill upon said location, commencing such drilling on the 24th day of April, 1910, and completing such effort with the discovery of oil in paying quantities by the bringing in on the 17th day of June, 1910, of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through said well, drilled as aforesaid under said mineral location, a large quantity of oil which, after delivery to the mineral locator of his proportion as royalty as provided in said lease, the Gulf Refining Company of Louisiana has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

#### VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment of work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

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#### VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

#### VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2d, 1910, prior to which date (to-wit, on June 17th, 1910) said locator, J. C. Gibbs, through his lessee, Gulf Refining Company of Louisiana, had made a discovery on said tract, of oil in paying quantities, under the location made by him on March 31st, 1910; all of which defendants allege to be true, and plead the same in bar to the bill, and pray the

judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

## IX.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locator, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, seven thousand one hundred and thirty & 93/100 (7130.93) barrels of oil of the market value of Four Thousand Eight Hundred and Six & 43/100 (\$4,806.43) Dollars; of which amount one thousand four hundred and eighty-five & 46/100 (1,485.46) barrels of oil of the market value of One Thousand and One & 15/100 (\$1,001.15) Dollars was delivered to said locator under the stipulations of said lease, and five thousand six hundred and forty-five & 47/100 (5,645.47) barrels of oil of the market value of Three Thousand Eight Hundred and Five & 28/100 (\$3,805.28) Dollars (the remainder), retained by said lessee for its own use as owner—all of which it had the right to do.

## X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal or-

der should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of J. C. Gibbs was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the well above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

## XI.

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, therefrom, and that said well was drilled in good faith

and under such belief of right. And defendants show that in the event the Court should hold that plaintiff is the owner of said land, that defendants are entitled to be reimbursed the entire cost of drilling, equipping and operating said well before they can be held liable, if any such liability there be, for any oil extracted therefrom. And defendants show that the actual cost of the drilling and equipping of said well was Nine Thousand Three Hundred and Eighteen & 31/100 (\$9,318.31) Dollars and that the actual cost of the operation of said well to the 31st day of July, 1917, was Four Thousand Three Hundred and Ten & 63/100 (\$4,310.63) Dollars, making a total expense in the production of said oil by the drilling, equipping and operation of said well of Thirteen Thousand Six Hundred and Twenty-eight & 94/100 (\$13,628.94) Dollars.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is, in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that they may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendants the entire cost of drilling and equipping said well and of the operations thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendants in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said defendants and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,  
THIGPEN & HEROLD,  
& BARRETT & FILES,  
Solicitors for Defendants.

Indorsed:—Answer. Filed Sept. 29, 1917.

B.

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21 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.  
D. Starnes, J. L. Urquhart, Gulf Refining Company  
of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitors, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.



## III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

## IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

## VI.

Plaintiff further shows, in the alternative, that even if  
22        the said defendants are entitled to a set off, or  
         counterclaim, in any amount, which is denied,  
         the sum claimed by the defendants is excessive  
and should not be allowed.

## VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the At-  
torney General.

Indorsed:—Plaintiff's Reply to Defendants' Set off and Counterclaim. Filed Oct. 5, 1917.

B.

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Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding:—Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1170, In Equity.

Dillard P. Eubank, et al.

This cause came on this day to be heard upon the Pleas filed by defendants—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the complainant and Mr. S. L. Herold appearing for defendants. The matter was argued, submitted and taken under advisement by the Court.

## Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, et al.

In this cause, which cause had heretofore been argued and submitted, on the Pleas filed by defendants, counsel for either side being now present in open Court, decision is orally rendered, overruling the said Pleas, with the right reserved to defendants to renew said pleas upon the trial of the case upon its merits.

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(INTERROGATORIES PROPOUNDED BY  
PLAINTIFF TO THE GULF REFINING  
COMPANY OF LOUISIANA).

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Gibbs No. 1. State when said well was commenced and when completed.

(2).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy was 7,130.97 barrels, of the value of \$4,806.43. State whether or not the production of said well as given in your answer is exact, or estimative.

(3).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

25

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total

production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(7).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the well in suit.

(8).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.

(9).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

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(10).

What are the principal products manufactured from petroleum or crude oil?

(11).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(12).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b) the profits made by it from the manufacture and sale of the products of said crude oil.

(13).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(14).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether

the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(15).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other defendants herein out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalties were paid and the amounts paid to each.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Interrogatories & Interrogatories to be Answered by the Gulf Refining Company of Louisiana. Filed Feb. 20, 1918.

B.

28 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1170 In Equity.  
Dillard P. Eubank, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third Vice-President, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Gibbs No. 1 was commenced on April 24th, 1910, and completed on June 17th, 1910.

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to July 31st, 1917, are exact.

To Interrogatory No. 3, defendant answers:

(a) The total production from the said well to July 31st, 1917, was 7,130.93 barrels, of the value of \$4,806.43;

(b) From July 31st, 1917, to January 1st, 1918, None; well quit producing in July, 1913.

To Interrogatory No. 4, defendant answers:

The well was operated by itself.

To Interrogatory No. 5, defendant answers:

Yes, a record was kept of daily production of the oil from said well.



To Interrogatory No. 6, defendant answers:

The production as given above is exact.

To Interrogatory No. 7, defendant answers:

L. E. Delcuze, Auditor of the Gulf Refining Company  
of Louisiana, Gulf Pipe Line Company Building,  
29 Houston, Texas.

To Interrogatory No. 8, defendant answers:

The production from said land up to January 1st, 1918, was 7,130.93 barrels of oil, of the value of \$4,806.43. The value as given is exact and is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 9, defendants answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil; the oil produced by it was sold to the Gulf Pipe Line Company.

To Interrogatory No. 10, defendant answers:

Gasoline, kerosene and lubricating oils.

To Interrogatory No. 11, defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 12, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profit whatever from the sale of any or all of the crude oil extracted from the land in controversy; the expenses incurred by it in drilling, equipping and operating the said well being ..... \$13,628.94;

the total receipts by it from the sale of said oil plus pipage charge .....	5,519.52;
making a net loss to this defendant of ....	<u>\$8,109.42.</u>

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 13, defendant answers:

The crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter company in the State of Texas.

30 To Interrogatory No. 14, defendant answers:

(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company;

(b) Made no profit;

(c) Delivery, as aforesaid, was made to the purchaser at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same. Of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 15, defendant answers:

There were delivered by the Gulf Refining Company of Louisiana, as royalty, to the other defendants herein, 1,485.46 barrels of oil, of the value of \$1,001.15, as follows, to-wit:

	Bbls.	Value.
J. L. Urquhart .....	297.10	200.21
T. D. Starnes .....	148.58	100.12
Eugene Hanszen .....	32.96	31.30
J. B. Files .....	445.67	300.38
D. P. Eubank .....	561.15	369.14

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1,485.46    1,001.15

C. R. MINOR.

Sworn to and subscribed before me, on this the 15th day of March, 1918.

J. A. THIGPEN,

(Seal)

Notary Public in and for Caddo  
Parish, Louisiana.

31                    Indorsed:—Answer of Gulf Refining Company  
of Louisiana to Interrogatories. Filed Apr. 20,  
1918.  
B.

32      United States District Court, Western District  
         of Louisiana.

United States

vs.

No. 1170.

Dillard P. Eubank, Et Al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,

Judge.

March 29, 1918.

Filed Mar. 29, 1918.

## PLFF. K.

R. B. Cook, Stenographer.

No. 1170.

United States vs. D. P. Eubank, et al.

Suit No. 1170.

Statement of the Oil Run by the Gulf Refining Co. of  
La. from September, 1910, to August, 1913, from  
Land Embraced in Suit.

	Bbls.	Value.
Total oil run from September, 1910, to August, 1913, when well ceased to produce.....	7,130.93	\$4806.43

## Division of Oil and Value.

J. L. Urquhart .....	297.10	200.21
T. D. Starnes .....	148.58	100.12
Eugene Hanszen .....	32.96	31.30
J. B. Files .....	445.67	300.38
D. P. Eubank .....	561.15	369.14

Total Royalty paid .....	1485.46	\$1001.15
Total retained by the Gulf Re- fining Co. as its share.....	5645.47	\$3805.28
Pipe Line earnings on oil run .....		713.09

Total.....		\$4518.37
Cost of drilling and equipping the well and operation of same from September, 1910, to August, 1913.....		\$13,628.94

The first work done on this claim was April 24, 1910, when the well in suit was begun.

Filed Jan. 21, 1919.

34 Gulf Refining Company of Louisiana.  
Caddo Parish.

Statement Showing Pipe Runs from Gibbs Well No. 1.  
From September, 1910, Through July, 1913.

Year. 1910.	Barrels.	Price.	Amount.
September	347.91	40c	139.16
October	281.28	40	112.50
November	267.56	42	112.37
December	235.44	42	98.87
Total	1,132.19		462.90
1911.			
January	158.89	44	69.90
February	225.31	44	99.14
March	79.20	44	34.85
March	80.16	50	40.08
April	236.22	50	118.10
May	222.98	55	122.64
June	78.55	55	43.20
June	139.52	60	83.70
July	230.25	60	138.13
August	211.21	60	126.72
September	69.32	60	41.59
September	142.20	62	88.15

40

October	225.68	62	139.91
November	158.28	62	98.12
December	228.88	62	141.90

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Total	2,486.65		1,386.15
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1912.

January	89.49	65	58.17
January	83.62	67	56.02
January	50.38	69	34.75
February	157.75	72	113.57
March	233.12	72	167.85
April	83.55	72	60.15
April	84.31	75	63.22
May	158.93	75	119.20
May	83.96	77	64.64
June	153.53	77	118.21
July	74.20	77	57.12
July	82.71	80	66.16
August	228.59	80	182.86
September	147.35	80	117.87
October	216.36	80	173.07
November	147.28	83	122.24
December	71.70	83	59.50
December	161.62	91	147.07

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Total	2,308.45		1,781.67
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1913.

January	142.55	93	132.57
February	198.40	98	194.43
April	222.90	98	218.45
March	139.66	98	136.88
May	178.54	98	174.98

June	160.46	98	157.26
July	161.13	1.00	161.14
Total	1,203.64		1,175.71
Grand Total	7,130.93		\$4,806.43
Plus pipage earnings on 7130.93 bbl. @ 10c. per bbl. ....			713.09
			<u>\$5,519.52</u>

35 Total Pipe Line Runs Divided as Follows:

Paid to	Barrels.	Value.
J. L. Urquhart .....	297.10	200.21
T. D. Starnes .....	148.58	100.12
Eugene Hanszen .....	32.96	31.30
J. B. Files .....	445.67	300.38
D. P. Eubank .....	561.15	369.14
Gulf Refining Co. of La....	5,645.47	3,805.28
	<u>7,130.93</u>	<u>\$4,806.43</u>

Division of Oil.

From September 1910 to November 1, 1912.

J. L. Urquhart .....	1/3 of 1/8
T. D. Starnes .....	1/6 of 1/8
J. B. Files .....	1/2 of 1/8
D. P. Eubank .....	8.33-1/3
Gulf Refining Co. of La. ....	79.16-2/3

From November 1, 1912, Through July, 1913.

J. L. Urquhart .....	1/3 of 1/8
T. D. Starnes .....	1/6 of 1/8
J. B. Files .....	1/2 of 1/8



D. P. Eubank .....	3/4 of 1/12
Eugene Hanszen .....	1/4 of 1/12
Gulf Refining Co. of La. ....	79.16-2/3
2—March 21, 1918—5.	

Gulf Refining Company of Louisiana,  
Caddo Parish.

Statement Showing Cost of Drilling and Equipping  
Operating and Total Production and Value of Gibbs  
No. 1 to December 31, 1917.

Commenced Drilling—April 24, 1910.  
Completed June 17th, 1910.

Expenditures.

Drilling and equipping No. 1..	9,318.31	
Operating expense to December		
31, 1917 .....	4,310.63	
	<hr/>	13,628.94

Oil Production (Gross).

7130.93 bbls. @ various prices,		
plus pipage .....	5,519.52	5,519.52
	<hr/>	<hr/>
Balance to pay out .....		8,109.42

Note:—Quit producing July, 1913.  
2—March 21, 1918—5.

36        In the District Court of the United States, for  
             the Western District of Louisiana.

United States of America, Plaintiff,  
             vs.                No. 1170, In Equity.  
Dillard P. Eubank, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that time so withdrawn.

2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered, as to the liability which the Master certified as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

3.

That the Master refused to allow the expenditures incurred in the production of oil on said property as off-

sets against the total amount of oil produced; whereas same should be allowed, thereby eliminating this defendant from any liability.

## 4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Defendant, Gulf  
Refining Company of Louisiana.

Indorsed:—Exceptions of Gulf Refining Company of Louisiana to the Report of the Special Master. Filed Jan. 30, 1919.

B-

Now comes Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes and J. L. Urquhart, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that time so withdrawn.

That the Master has in said report stated and certified that these defendants should be condemned in a money judgment in the amounts of the royalties received by them from the Gulf Refining Company of Louisiana from the well on the property in controversy; whereas, he should have reported and certified that no money judgment should be rendered against them.

That the said Master has in said report certified that these defendants should pay interest upon the amount

of judgment rendered against them, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Defendants.

39 Indorsed:—Exceptions of Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes and J. L. Urquhart to the Report of the Special Master. Filed Jan. 30, 1919.

B.

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40 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1170, In Equity.

Dillard P. Eubank, Et Al.

Now into this Honorable Court comes the plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F 1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T," which said exhibits were by agreement of counsel (record p. 2) made a part of the record of this cause. This Court held in the said Mason case that the withdrawals included T. 20 N., Range 16 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

41           2. The mineral locations in this case were made March 3, 1910 (record 44, and answers of defendants to the bill of complaint). The testimony shows that no work leading to a discovery on the land embraced in the mineral location was begun until April 24, 1910 (record, pp. 44-45).

Plaintiff avers that the drilling of said wells and the removal of oil from the said land were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by

said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, (testimony of D. P. Eubank, record 46). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a) Against the Gulf Refining Co. of Louisiana for amount of production of oil from the land in controversy, less royalties paid out of the said production, all as shown by the Master's report in the sum of .....	\$3805.28
--	-----------

(b) Against the Gulf Refining Company of Louisiana and the several royalty claimants of the said Company for the amounts set opposite their names, each in solido with said Company, as shown by the Master's report, aggregating .....	\$1001.15
	\$4806.43

42            Said sums aggregating \$4806.43, being total value of oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

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43      In the District Court of the United States for  
         the Western District of Louisiana, Shreve-  
         port Division.

United States of America,

vs.

No. 1170, In Equity.

Dillard P. Eubank, John B. Files, Eugene Hanszen, T.  
D. Starnes, J. L. Urquhart, Gulf Refining Company  
of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly;

II. That the land described in the bill of complaint, namely, the South half of the North-east quarter, Section



Five (5) in Township Twenty (20) North, of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said section, together with a strip of land lying between the traverse line of said lots and the mean high water mark of 1812 and 1839 of James Bayou, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or minerals laws of the United States.

III. That the mineral location made by J. C. Gibbs recorded April 18, 1910, in Book 59, page 338, and the lease made by the said J. C. Gibbs April 2, 1910, to the Gulf Refining Company of Louisiana, recorded in conveyance Book 59, page 295 of the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are declared null, void and held for naught insofar as  
 44      the said mineral location and lease may include directly or indirectly the above described property, and, to that extent the said mineral location and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

B. That the said defendants, namely, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and J. L. Urquhart, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and 21/100 (\$200.21) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and T. D. Starnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and 12/100 (\$100.12) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

45 VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and Eugene Hanszen, in solido, and the said defendants are hereby condemned and ordered to

pay to plaintiff, the full sum of Thirty-one and 30/100 (\$31.30) Dollars together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and John B. Files, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred (\$300.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-Nine and 14/100 (\$369.14) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the said defendants be and they are hereby ordered, directed, and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by such accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of

Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and

46 authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Hundred (\$500.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of this Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require

the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another Receiver or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,  
United States Judge.

47 Indorsed:—Decree. Filed August 12, 1919.

48 In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, Et Al., Defendants,

The petition of all of the defendants in the above entitled and numbered cause represents:

1.

That they have been aggrieved by the decree rendered by Your Honor and signed on the.....day of August, 1919, wherein they are condemned in solido to pay to the plaintiff the sum of One Thousand and One and 15/100

(\$1,001.15) Dollars, together with five per cent per annum interest thereon from January 11th, 1919; and avers that error has been committed in the rendering in the rendering of the said decree in this, to-wit:

## 2.

That the Court erred in confirming the Master's Report, in which was recommended the decree as signed by Your Honor, condemning the Gulf Refining Company of Louisiana and its co-defendants in solido in the said sum of \$1,001.15, when according to the uncontradicted testimony and to the facts as stated in the Master's Report itself, there was but one well drilled on the property, the total value of the oil extracted from which was Four Thousand Eight Hundred and Six and 43/100 (\$4,806.43) Dollars, produced at a cost of Thirteen Thousand Six Hundred and Twenty-eight and 94/100 (\$13,628.94) Dollars; so that there was a net loss from the operation of the property and, consequently, no damage whatever so the Government.

Wherefore, petitioners pray for a hearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

THIGPEN & HEROLD,  
Solicitors for Defendants.

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## ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,  
United States District Judge.

August 4, 1919.

Indorsed: Petition for Rehearing. Recorded in Chancery Order Book, Vol. 5, Folio 668. Filed: August 13, 1919.

50            714.            Chancery Order Book.            Vol. 5.

United States District Court for the Western District of Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,  
vs.            No. 1170, In Equity.  
Dillard P. Eubank, Et Al.

In this cause the Motion for Re-hearing which was heretofore filed, ~~on~~ on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. I. Herold, after argument, and consideration by the Court,

It is ordered, that this Motion be overruled.

51            In the District Court of the United States, for the Western District of Louisiana.

United States of America,  
vs.            No. 1170, In Equity.  
Dillard P. Eubank, Et Al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

#### ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,  
United States Judge.



ASSIGNMENT OF ERRORS ON PLAINTIFF'S  
APPEAL.

In the District Court of the United States for the West-  
ern District of Louisiana.

United States of America,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, Et Al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order

was issued for the purpose of conserving the public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

### III.

The Court further erred in allowing said counterclaim and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knowledge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

### IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the

oil extracted and removed from said land, as shown by  
 the report of the Master in Chancery, or, in de-  
 54 **fault of such relief**, that the cause be remanded  
 to the District Court with instructions to enter  
 a decree in favor of plaintiff for the full value of said  
 oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of  
 drilling and equipping said well be deducted and ex-  
 cluded from any allowance that may be made to defend-  
 ants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the  
 said decree be affirmed.

ROBERT A. HUNTER,  
 Special Assistant to the  
 Attorney General.

Indorsed: Plaintiff's Petition for Appeal, Order Al-  
 lowing Same, and Assignment of Errors. Filed Jan. 3,  
 1920.

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55 In the District Court of the United States, for  
 the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1170, In Equity.

Dillard P. Eubank, Et Al., Defendants,

To the Honorable Judge of the District Court of the  
 United States for the Western District of Louisiana,  
 Sitting Within and for the Shreveport Division:

All the defendants in the above numbered cause,  
 feeling themselves aggrieved by the decree made and en-  
 tered in this cause on the 12th day of August, 1919, and

by the refusal of rehearing thereof on December 4th, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

THIGPEN & HEROLD,  
Solicitors for Defendants.

#### ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Fifteen Hundred Dollars.

Jan. 10th, 1920.

RUFUS E. FOSTER,  
United States District Judge.

Indorsed: Motion and Order for Appeal. Filed Jan. 12, 1920.

B.

## 56      SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States, for the  
Western District of Louisiana.

vs.              No. 1170, In Equity.

Dillard P. Eubank, Et Al., Defendants,

Know all men by these presents: That we, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Co. of La., as principals, and the American Surety Co. of New York, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Fifteen Hundred Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff, and Dillard P. Eubank, et al., were defendants, numbered on the Equity docket 1170, a decree was rendered and signed against the said Dillard P. Eubank, et al., and a rehearing thereof refused on Dec. 4th, 1919, and the said Dillard P. Eubank, et al., having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now if the said Dillard P. Eubank, et al., shall prosecute such appeal to effect and answer all damages and

costs if they fail to make their pleas good, then the above  
 obligation to be void; otherwise to remain in  
 57 full force and effect.

DILLARD P. EUBANK,  
 By S. L. HEROLD, Atty.

JOHN B. FILES,  
 By S. L. HEROLD, Atty.

EUGENE HANSZEN,  
 By S. L. HEROLD, Atty.

T. D. STARNES,  
 By S. L. HEROLD, Atty.

J. L. URQUHART,  
 By S. L. HEROLD, Atty.

(Seal)

GULF REFINING CO. OF  
 LA.  
 By S. L. HEROLD, Atty.

AMERICAN SURETY CO.  
 OF NEW YORK,  
 By R. L. GAFFNEY,

Atty. in Fact.  
 By J. G. TRICHEL.

Approved:

(Seal)

RUFUS E. FOSTER,  
 U. S. District Judge.

B.

Indorsed:—Supersedeas Bond. Filed Jan. 12, 1920.

58 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1170, In Equity.  
Dillard P. Eubank, Et Al., Defendants,

And now, on this the 10th day of January, 1920, come all of the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendants; and for specifications of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 18th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate

the property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

59

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.



## Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of all the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,  
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.

B.

60

## STIPULATION OF COUNSEL.

In the District Court of the United States for the  
Western District of Louisiana.

United States of America,  
vs.

No. 1170.

D. P. Eubank, Et Al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1168, and 1171, were consolidated in

the District Court for trial with the case entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral  
 61 location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public

land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Original answer of T. D. Starnes.
3. Original answer of J. L. Urquhart.
4. Answer of all defendants.
5. Plaintiff's reply to set off and counterclaim.
6. Order of Court overruling pleas of defendants.
7. Interrogatories propounded by plaintiff to Gulf Refining Co. of Louisiana.
8. Answers of Gulf Refining Co. of Louisiana to interrogatories.
9. Order appointing E. H. Randolph Special Master in Chancery.
10. Pages 1 and 4 of statement of James W. Neal, Special Agent of the General Land Office, marked plaintiff's K, showing quantity and value of oil produced, royalties and costs of drilling and operating the well.

together with all other information given in said statement.

11. Exceptions of Gulf Refining Company of Louisiana to Master's report.

12. Exceptions of Dillard P. Eubank to Master's report.

13. Plaintiff's exceptions to Master's report.

14. Final decree.

15. Defendants' petition for rehearing.

16. Order of Court overruling defendants' petition for rehearing.

17. Plaintiff's petition for appeal, order allowing same and assignment of errors.

18. Petition of defendants for appeal, order allowing same and assignment of errors, and appeal bond.

19. This stipulation.

62            Thus done and signed this 12th day of May,  
1920.

ROBERT A. HUNTER,  
Attorney for Plaintiff.  
J. B. FILES,  
THIGPEN & HEROLD,  
Solicitors for Defendants.

Filed May 14, 1920.

# CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing sixty-two pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is plaintiff and D. P. Eubank, Et Al., are Defendants, No. 1170 in Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

W. B. LEE, Clerk,  
United States District Court,  
Western District of Louisiana.

(Seal)

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Citations omitted from the printed record, being filed in the Original.

• • • • •

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from Minutes of February 24, 1921.

No. 3546.

DILLARD P. EUBANK et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

*Opinion of the Court.*

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,  
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western  
District of Louisiana.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-  
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for  
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of *Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit*, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.



*Judgment.*

Extract from Minutes of May 17th, 1921.

No. 3546.

DILLARD P. EUBANK et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

*Petition for Appeal and Order Allowing Same.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

*Solicitors for said Appellants.*

*Order.*

Let the foregoing petition be granted and the appeal be allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Seven Thousand and Two Hundred Dollars (\$7,200.00).

June 7, 1921.

(Signed)

R. W. WALKER,

*Judge U. S. Circuit Court of Appeals.*

*Assignment of Errors.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specifications of such errors, they show:

*First.*

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

*Second.*

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

*Third.*

The Court erred in holding defendants to be trespassers.

## Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

## Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

## Sixth.

The Court erred in holding that defendants did not act in good faith.

## Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

## Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

## Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

## Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

## Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

## Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production

from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in not reversing the judgment of the District Court which had condemned defendants in solido in a sum greater than the difference between the value of the oil extracted from the property and the actual cost incurred, as found by the Master and the District Court, of the production of such oil.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

*Solicitors for Defendants.*

*Appeal Bond.*

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3546.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana,  
Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and the Gulf Refining Company of Louisiana, as principal, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause in the full sum of Seven Thousand Two Hundred (\$7,200.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant and Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and the Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3546, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) DILLARD P. EUBANK,  
By S. L. HEROLD,

*Atty.*

(Signed) JOHN B. FILES,  
By S. L. HEROLD,

*Atty.*

(Signed) EUGENE HANSZEN,  
By S. L. HEROLD,

*Atty.*

(Signed) T. D. STARNES,  
By S. L. HEROLD,

*Atty.*

(Signed) J. L. URQUHART,  
By S. L. HEROLD,

*Atty.*

(Signed) GULF REFINING COMPANY OF LA.,  
By S. L. HEROLD,

*Atty.*

(Signed) AMERICAN SURETY COMPANY OF  
NEW YORK,

By CHAS. HOFFMAN,

*Resident Vice-President.*

Attest:

(Signed) C. MURPHY,  
*Resident Assistant Secretary.*

Approved this 7th day of June, 1921.

(Signed)

R. W. WALKER,  
*United States Circuit Judge.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 71 to 80 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3546, wherein Dillard P. Eubank and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 70, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit Court of Appeals.*

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,  
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Dillard P. Eubank, John B. Files, Eugene Hansen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3546 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Dillard P. Eubank and others as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,  
*United States Circuit Judge.*

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

[Endorsed:] No. 3546. United States Circuit Court of Appeals, Fifth Circuit. Dillard P. Eubank et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellants. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,352. U. S. Circuit Court Appeals, 5th Circuit. Term No. 397. Dillard P. Eubank, John B. Files, Eugene Hanszen, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,352.

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1922

No. 116

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LYDIA HANSZEN MacMULLEN, J. A. MacMULLEN,  
H. EARL BARNES, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

---

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

---

FILED JULY 2, 1921.

(28,353)



(28,353)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 398.

LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN,  
H. EARL BARNES, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

LYDIA HANSZEN McMULLEN, J. A. McMULLEN, H. EARL BARNES, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3547, as follows:

acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Mrs. Lydia Hanszen McMullen, a citizen of the State of Nevada, and a resident of the town of Carson City, said State;

J. A. McMullen, husband of the said Mrs. Lydia Hanszen McMullen, a non-resident of the state, whose residence is unknown to plaintiff;

Sam W. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

H. Earl Barnes, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

The Pure Oil Operating Company, a corporation organized under the laws of the State of West Virginia and domiciled in the City of Pittsburgh, Pennsylvania, and doing business in the Western District of Louisiana with L. C. Blanchard of Shreveport, Louisiana, as its duly authorized agent for the service of process.

Robert L. Stringfellow, a citizen of Louisiana and a resident of the City of Shreveport in the Western District of said State, Shreveport Division.

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

2       Natalie Oil Company, a corporation organized under the laws of Louisiana and domiciled and doing business in the City of Shreveport, in the Western District of said State, Shreveport Division;

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and the

Standard Oil Company of Louisiana, a corporation organized under the laws of Louisiana, and domiciled in the City of Baton Rouge, Eastern District of said State; and thereupon complains and shows unto your Honor:

#### I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number Three (3) of Section Three (3) and Lots Numbers Three, Four and Five (3, 4 and 5) of Section Four (4), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing thirty-seven and seventy-nine hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum gas and other minerals therein contained.

were extracted therefrom under the color of an illegal mineral location made by defendants Lydia Hanszen (now Mrs. Lydia Hanszen McMullen), H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow and Dillard P. Eubank, pretending to act under the placer mining laws of the United States, which pretended location was recorded April 2, 1910, in Book 59, page 267, of the Conveyance records of Caddo Parish, Louisiana. That said pretended mineral location embraced eighty-seven and nine hundredths acres, including the land herein involved, and is in words and figures as follows:

That said pretended mineral location embraced thirty-seven and fifty-eight (37.58) hundredths acres, including the land herein involved, and which location is in words and figures as follows, to-wit:

#### Notice of Mining Location.

Miss L. Hanszen, et als.  
to  
The Public.

To all whom it may concern:

Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, having complied with the requirements of Chapter VI, title 32 of the Revised Statutes of the United States, and the local laws, rules and regulations and under authority of the Act of Congress of February 11, 1897, relating to the location of land containing petroleum, oil or other mineral oils under placer mining laws, the undersigned have located and caused a survey to be made, and have taken possession of 87.09 acres of land, described as follows, lying in Caddo Parish, Louisiana, to-wit:

Beginning 56 chains West of the SE corner Sec. 3, T. 20 N. R. 16 W. at a stake, run thence west  $48\frac{1}{2}$  chains; thence N.  $2^{\circ}$  E. 6 chains; thence N.  $15^{\circ}$  W. 3 chains; thence N.  $47\frac{1}{2}^{\circ}$  E. 2.5 chs.; thence N.  $16^{\circ}$  W. 2.5 chs.; thence S.  $86^{\circ} 30'$  W. 2.5 chs.; thence N.  $17^{\circ} 18'$  W. 2.05 chs.; thence N.  $10^{\circ}$  E. 2.5 chs.; thence N.  $84^{\circ} 30'$  W. 3.75 chs.; thence N.  $2^{\circ} 54'$  E. 2.2 chs.; thence N.  $51^{\circ} 20'$  E. 3 chs.; thence N.  $52^{\circ} 27'$  E. 7.61 chs.; thence N.  $1^{\circ} 23'$  W. 5.33 chs.; thence N.  $74^{\circ} 36'$  E. 10 chs.; thence S.  $25^{\circ} 6'$  E. 6 chs.; thence S.  $9^{\circ} 55'$  E. 3.5 chs.; thence S.  $40^{\circ} 50'$  E. 21 chs.; thence S.  $66^{\circ} 40'$  E. 6.5 chs.; thence N.  $81^{\circ} 30'$  E. 3.5 chs.; thence S.  $83^{\circ} 40'$  E. 8 chs.; thence S.  $18^{\circ} 40'$  E. 6.25 chs.; to place of beginning and have set stakes at each corner thereof, containing 87.09 acres.

Witness our hands this 2nd day of April, 1910.

Signed: L. HANSZEN,  
By R. L. STRINGFELLOW.  
S. W. MASON,  
By R. L. STRINGFELLOW.  
D. P. EUBANK,  
By R. L. STRINGFELLOW.  
H. E. BARNES,  
By R. L. STRINGFELLOW.  
Locators.

Attest:

B. F. ALLEN,  
J. T. SPEARMAN.

The said above pretended locators themselves made no effort to explore said land, or drill for oil or gas thereon, but on April 21, 1910, by act recorded in Book 59, page 355, executed a mineral lease thereof to E. H. Jennings, who on January 6, 1911, by act of record in Conveyance Book 66, page 665, transferred said lease to the Pure Oil Operating Company, defendant herein, which acts aforesaid are of record in the Office of the Clerk and Recorder of Caddo Parish, Louisiana.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and leases, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the defendant, the Pure Oil Operating Company, marketed and sold to the said Gulf Refining Company of Louisiana, and to the said Standard Oil Company of Louisiana, defendants herein. That the said Pure Oil Operating Company received the price of the oil and gas so produced, marketed and sold by it, and paid a royalty out of the same to the above named locators, and to defendant Natalie Oil Company, which acquired an interest in such royalty, the amount of which price so received, and of which royalty so paid, being to plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the defendants is sought.



## VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

## VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of One Hundred  
Thousand (\$100,000.00) Dollars, and that all of  
6 the defendants herein acted in bad faith in the  
premises.

## VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location and lease, and transfers thereof, as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiffs title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, (used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production  
7 and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of

oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to the Pure Oil Operating Company, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank and the Natalie Oil Company, defendants herein, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such orders, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the following  
 8 defendants, not inhabitants of or now within this district, to-wit: Mrs. Lydia Hanszen McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

And may it further please the Court, that an order be granted and entered directed to J. A. McMullen, defendant herein, directing said defendant to appear and an-

swer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

ROBERT A. HUNTER,  
Special Assistant to the At-  
torney General.

#### AFFIDAVIT.

United States of America,  
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

(Seal) C. W. CALHEATT,  
Deputy Clerk U. S. District Court  
Northern District of California.

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## ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana are not inhabitants of the Western District of Louisiana and are domiciled outside of said district.

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for the period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that copies of this order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 8th day of Aug., 1917.

GEO. WHITFIELD JACK,

United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.

B.

10 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs.

No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

Now comes the Gulf Refining Company of Louisiana,  
one of the defendants in the above cause, and moves the  
Court to dismiss the bill filed in this case because said  
bill does not state any matter of equity entitling plaintiff  
to the relief prayed for, nor are the facts as stated suffi-  
cient to entitle plaintiff to any relief against this de-  
fendant.

Wherefore, defendant prays that this motion be sus-  
tained, the bill be dismissed as against this defendant,  
and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,

Solicitor for Defendant, Gulf Re-  
fining Company of Louisiana.

Indorsed:—Motion to Dismiss on Part of Gulf Refin-  
ing Company of Louisiana. Filed Aug. 18, 1917.

B.

11 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America,

Plaintiff,

vs.

No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Nata-  
lie Oil Company, Gulf Refining Company of Louisi-  
ana, Standard Oil Company of Louisiana,

Defendants.

The defendants, Mrs. Lydia Hanszen McMullen, divorced  
wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason,  
Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Oper-  
ating Company, and J. A. Thigpen and S. L. Herold as  
liquidators of the Natalie Oil Company, said corporation  
having been heretofore dissolved, answer the bill of com-  
plaint herein brought against them as follows:

### I.

The ownership by the United States, on and before  
December 15th, 1908, of all the tract of land described  
in Article I of the bill of complaint except Lot Three (3)  
of Section Four (4) is admitted; but it is denied that the  
plaintiff is now the owner of any part thereof or entitled  
to the possession of said land or of the minerals therein  
contained.

As to said Lot Three of Section Four, defendants say  
that they were advised that same was the property of the  
United States prior to their taking possession of same  
as hereinafter set out; but from facts ascertained long

subsequent thereto, they cannot now categorically affirm or deny such ownership of said lot by the United States on said date, but they say that they took possession of all said property believing it to be public land of the United States.

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## II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

## III.

Your defendants admit that they entered upon and took possession of said property for the purpose of drilling for



oil and gas and did drill the wells referred to in the bill of complaint, from which wells oil has been produced and sold, as will hereafter be specifically set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location, and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, or to the injury of plaintiff.

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## IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants except the Natalie Oil Company (which acquired later by purchase from H. Earl Barnes) were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article One of the bill, and that under said location your defendants were in possession of said land, as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order.

## V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Miss Lydia Hanszen (now Mrs. Lydia Hanszen McMullen), H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow and Dillard P. Eubank; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws

of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Your defendants admit the execution of lease by said locators to E. H. Jennings, and the assignment thereof to the Pure Oil Operating Company (as recorded in Conveyance Book 66, page 665, of the records of Caddo Parish, Louisiana); and show that under said lease, lawfully made and entered into, said E. H. Jennings proceeded in good faith and according to the terms of said lease to drill upon said location, commencing such effort on April 30th, 1910, and completing same with the discovery of oil in paying quantities by the bringing in on the tenth day of September, 1910, of an oil well, thereby fully completing said location.

And defendants admit that there has been withdrawn from said land through said wells, drilled as  
 14 aforesaid under said mineral location, a large quantity of oil, which, after delivery to the mineral locators of their proportion as royalty, as provided in said lease, the Pure Oil Operating Company has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

## VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order, and followed by the assesment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

## VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

## VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, at which said date and prior thereto, said mineral locators were in the actual possession of said land as bona fide occupants thereof in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact made through such work on the tenth day of September, 1910) and that as such, all the rights of said locators were specially saved and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910; all of which defendants allege to be true and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

## IX.

In event they be required to answer further, then your defendants would show that in its operation on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom a quantity of oil, the amount and value of which will be shown later by an amendment to be filed to this answer.

## X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant Pure Oil Operating Company, likewise, before acquiring said contract of lease consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location aforesaid was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given acquired said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

## XI.

And defendants show in the alternative, that is in the event the Court holds said location invalid, that Lot

Three of Section Four is not the property of the United States and was not the property of the United States at the date of said location, or on December 15th, 1908, but was on such dates and long prior thereto, the property of the Board of Commissioners of the Caddo Levee District of Louisiana.

Defendants show in such event that said property is and was on March 2nd, 1849, swamp and overflowed land, and that by act of Congress approved on said date, there was granted to the State of Louisiana all the swamp and overflowed lands within said state; and that such act of Congress was a present grant thereof, operating such effect from its date. That said lands were left out of all surveys by the United States until the survey approved March 28th, 1917, wherein each lot either consists entirely of such swamp and overflowed land or consists for the greater portion thereof of such swamp lands.

And defendants show that said lands were granted by the State of Louisiana by Act 160 of the General Assembly of the year 1900 to said Board of Commissioners of the Caddo Levee District of Louisiana, as more fully appears from certificate of approval thereof by the Register of the State Land Office and the State Auditor of date July 6th, 1901, as recorded in Conveyance Book 28, pages 329, to 332 of the records of Caddo Parish.

And defendants, hence, still in the alternative, show that the United States having disposed by said act of Congress of said lands, has no further interest therein and can take nothing by this suit in regard thereto.

## XII.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under

a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that

17        said wells were drilled in good faith and under such belief. And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for any oil extracted therefrom; the cost of drilling, equipping and operating said wells will be set out later by an amendment to be filed to this answer.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that the said Pure Oil Operating Company may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said wells and of the operation thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Pure Oil Operating Company and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

THIGPEN & HEROLD,  
BARNETTE & BLANCHARD,  
Solicitors for Defendants.

Indorsed:—Answer. Thigpen & Herold. Barnette & Blanchard. Filed Sept. 29, 1917.

18 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisi-  
ana, Sitting within and for the Shreveport Division:  
The answer of the Standard Oil Company of Louisiana,  
one of the defendants, to the bill of complaint of the United  
States of America, complainant.

This defendant saving and reserving unto itself all and  
all manner of benefits and advantages of exception, which  
can or may be had or taken to the many errors, uncer-  
tainties and other imperfections in said Bill of Complaint

contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says as follows:

First. This defendant is not sufficiently informed as to the matters and things alleged and set out in paragraphs one and two of said Bill of Complaint to admit the same as therein stated; and, therefore, formally denies the same and leaves the complainant to make such proofs thereof as it may be advised.

19           Second. This defendant denies that it took possession of any part of the property described in paragraph three of plaintiff's Bill of Complaint, or that it drilled any wells thereon, but admits that it bought oil from said property, or a part thereof, under the terms and conditions hereinafter stated.

Third. In answer to the fourth paragraph of plaintiff's Bill of Complaint, this defendant says that it is not sufficiently informed as to whether any of its co-defendants were in possession of the property on the day and dates therein alleged, and for that reason it is unable to admit the matters and facts therein stated; but it denies that it was in possession of said property, or any part thereof, or, at the time, claiming rights of any nature or character whatever in connection therewith.

Fourth. In answer to the fifth paragraph of plaintiff's Bill of Complaint this defendant admits that L. Hanszen (now Mrs. McMullen), R. L. Stringfellow, S. W. Mason, D. P. Eubanks, and E. H. Barnes made a mineral location on said property, but it is not sufficiently advised in the premises to say whether the location was



legal or illegal, and, therefore, formally denies that said mineral location was illegal, and leaves the complainant to make such proof thereof as it may be advised; that it is not advised as to whether the locators made an effort to explore said land, but admits that they made and executed a mineral lease thereon to E. H. Jennings, and that the said E. H. Jennings made a transfer thereof to the Pure Oil Operating Company, one of its co-defendants, as therein alleged.

Further answering, this defendant admits that it has no title or interest in said property, and being without information as to the other matters of fact alleged in this paragraph of the Bill of Complaint is not in a situation to admit the same as therein stated, and it, therefore, formally denies the same and leaves the complainant to make such proof thereof as it may be advised; but this defendant avers, however, that it is unable to state  
 20 what quantity of oil was taken from said property, and from what wells said oil was taken, and the number of wells drilled on said property; that it took a part of the oil produced from said property which was run into its pipe lines as hereinafter stated.

Fifth. This defendant avers that on the 26th day of February, 1912, the said Pure Oil Operating Company, R. L. Stringfellow, Sam W. Mason, H. E. Barnes, D. P. Eubanks and L. Hanszen (now Mrs. McMullen) executed a division order, or agreement, with this defendant, wherein and whereunder they declared, certified and guaranteed to it that they were the legal owners of wells Nos. 1 and up on the property covered by said mineral location, which, as your defendant is advised, embraces a part of the property described in the Bill of Complaint, and, that this defendant acquired oil from said parties,

in good faith, and for valuable consideration, taken from said property, but this defendant is without information as to the number of wells drilled on said property, or the amount of oil taken therefrom, and whether the same was located on the particular property, the ownership of which is now claimed by the complainant, and this defendant annexes hereto a copy of the contract under which said oil was taken and the various assignments, and makes the same a part hereof, and marked "Defendant—Exhibit A."

Sixth. This defendant further answers that the oil so taken was acquired from said parties at the market price thereof on the respective dates on which the same was run into its pipe lines; that the total number of barrels of oil taken by this defendant from said parties, from said lease, amounts to 168,066.94 barrels, of the value of \$156,251.33; that of the amount due for said oil the sum of \$105,021.49 has been paid to the respective claimants, as hereinafter set out, and that this defendant has  
 21 now in its hands \$51,229.84 to be paid to the rightful owner, or owners, when the question of title to said property from which said oil was taken is finally determined. All of the oil taken, as aforesaid, and the amounts paid and retained will be shown by itemized statement which will be produced on the hearing hereof.

Seventh. This defendant denies that it bought said oil in bad faith. On the contrary, it avers that it acquired same in good faith, and run the same into its pipe lines from wells claimed to be owned by its co-defendants.

Eighth. Defendant further avers that it does not know and is not informed which one of the well or wells drilled

on said property is or are on the land in controversy, but that said oil was bought by it from the supposed owners, as alleged in paragraph five of this answer, and that the same was received and taken by it into its pipe lines, but not from any particular, separate, distinct, or designated well or wells, but that all of said oil was run and taken from wells drilled on said premises without reference to any particular or designated well or wells, and that it is unable to state with any degree of certainty the amount of oil taken from any or from each of the wells drilled on said property, and that prior to the taking of any of said oil it was advised by the alleged owners that the title thereto was vested in them, and that the oil so bought was acquired in good faith.

Ninth. Further answering, this defendant avers, in the alternative, that it acquired said oil from its co-defendants, who warranted the title to the property from which the same was taken, and that in the event their title to said property should be declared void, and this defendant held for the purchase price thereof, its co-defendants would constitute warrantors of the title thereto; and they being parties to said suit, should this defendant be  
 22 declared liable to the said complainant, for the value thereof, then, and in that event, it should have a like judgment against its co-defendants for such judgment as may be rendered against it in the premises; that such relief, in behalf of this defendant, would avoid a multiplicity of suits, and that in law and equity, should it be cast, it is entitled to a like judgment against each of them for such amounts as might be shown to have been paid to them.

Tenth. Further answering this defendant avers that when some question was raised as to the ownership of said

property it required of said defendants bonds of indemnity to secure it against any loss which might be occasioned by any successful claim urged against their said title, and to that end some of said parties executed bonds to indemnify it against loss of any nature or character whatever occasioned by adverse claims of ownership to said property, or the oil taken therefrom; that in conformity with said requirement, the said Pure Oil Operating Company executed a bond, of date December 18, 1913, for \$125,000.00, with the American Surety Company of New York, as surety, to cover this and oil taken from other properties, as shown by copy attached hereto and marked "Defendant—Exhibit B"; that on the 15th day of June, 1914, the said Pure Oil Operating Company executed another bond for \$50,000.00, with the American Surety Company of New York, as surety, which is also annexed hereto and marked "Defendant—Exhibit C"; that on January 6th, 1913, R. L. Stringfellow executed a bond for \$1,500.00, with the Southwestern Surety Company of Oklahoma as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit D" that on the 27th day of August, 1912, H. E. Barnes and H. L. Heilperin executed a bond for \$2,000.00, with the Fidelity & Deposit Company of Maryland as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit E"; that

23       on the 16th day of May, 1912, the said H. E. Barnes and H. L. Heilperin executed another bond for \$1,000.00, with the Fidelity & Deposit Company of Maryland as surety, a copy of which is attached hereto and marked "Defendant—Exhibit F"; that on the 5th day of June, 1914, the said Sam W. Mason executed a bond for \$2,500.00, with H. L. Heilperin as surety, a copy of which is also annexed hereto and marked "Defendant—Exhibit G"; that on the 9th day of February, 1914, the said Sam W. Mason executed a bond for \$2,500.00,

with H. L. Heilperin as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit H"; that on the 14th day of June, 1913, the said D. P. Eubanks executed a bond for \$2,500.00, with the United States Fidelity & Guaranty Company, as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit I"; that on the 25th day of January, 1914, the said H. L. Heilperin and H. E. Barnes executed a bond for \$5,000.00, with J. A. Thigpen and S. L. Herold as surety, a copy of which bond is also annexed hereto and marked "Defendant—Exhibit J", that upon the execution of said bonds, and on the faith thereof, the said sum of \$105,-021.49 was paid to the said Pure Oil Operating Company, H. L. Heilperin, H. E. Barnes, Sam W. Mason, D. P. Eubanks and R. L. Stringfellow, some of its co-defendants, and said amounts, so paid being shown by itemized statement to be produced on the trial hereof; and that defendant reserves the right, in the event it should be cast in this proceeding, to proceed against said sureties and principals to recover any loss it may sustain by reason of any judgment which may be obtained by the complaint against it.

Wherefore, this defendant having made full and complete answer to all the matters and things required of it in plaintiff's Bill of Complaint, prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and on final hearing should this defendant be cast, that a decree be entered in its favor against its co-defendants, the Pure Oil Operating Company, H. L. Heilperin, H. E. Barnes, Sam W. Mason, D. F. Eubanks and R. L. Stringfellow for such judgment as may be rendered against it on the demands of the complainant; and finally, this defendant prays for all general and equitable relief in

the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all other necessary orders and decrees as it may be entitled to in equity and good conscience, and from the nature and character of this case.

J. C. PUGH & SON,  
Solicitors for Standard Oil  
Co. of La.

25 "DEFENDANT—EXHIBIT A."

Shreveport, La., Feb'y. 26, 1912.

To the Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of Wells No. 1 and up on the Hanszen Farm, Sec. 4, Township 20, R. 16, Caddo Parish, State of Louisiana, including the royalty and interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit	Division of Interest	Postoffice Address.
The Pure Oil Operating Co., 7/8,		Pittsburg, Pa.
L. Hanszen, Trustee for S.		
W. Mason, D. P. Eubank and		
Herself	1/16	Shreveport, La.
H. E. Barnes	1/32	Shreveport, La.
R. L. Stringfellow	1/32	Shreveport, La.

Tank Nos. ....

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received in its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dust and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

By E. H. JENNINGS, Treasurer.

R. L. STRINGFELLOW,

SAM W. MASON,

H. E. BARNES,

D. P. EUBANK,

L. HANSZEN,

L. HANSZEN, TRUSTEE.

Witness:

W. J. HIGGINS,  
S. L. CRONIN (23, 4 & 5)

Approved:

J. C. PUGH.

26

March 1st, 1916.

To the Standard Oil Co. of La.:

The undersigned have this day sold 1/32nd interest in Wells Nos. 1 and up, on Hanszen Mineral Claim Farm, Secs. 3 and 4, Tp. 20 R. 16, Caddo Parish, State of Louisiana, as below.

Interest	Name	Postoffice Address.
1/32nd	Natalie Oil Company	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tanks Nos. ....

H. E. BARNES,  
ESTATE OF H. L. HEILPERIN,  
By MARX BLUESTEIN,  
J. A. THIGPEN, Executors.

The undersigned hereby certify and agree that ....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Company of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La. is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:



First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La. as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,  
By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,  
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.  
Copy.

(Copy).

State of Louisiana,  
Parish of Caddo, ss:

Know all men by these presents, that we, The Pure Oil Operating Company, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana in the full sum of One Hundred Twenty-five Thousand Dollars, for the payment of which we bind ourselves, our successors and legal representatives, firmly and in solido by these presents.

Dated at Shreveport, Louisiana, this 18th day of December, in the year of our Lord one thousand nine hundred and thirteen.

The condition of the above obligation is such that:

Whereas, the said The Pure Oil Operating Company as the lessee of L. Hanszen, et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, North, Range Sixteen West, being the same tract of land located under Placer Mining Laws by the lessors on April 2, 1910, as appears from the said location recorded in the Conveyance Records of Caddo Parish, Louisiana; and

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ

of error sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said The Pure Oil Operating Company; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hanszen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Ten, Township Twenty, North, Range Sixteen West, and being more particularly described as follows:—Beginning at a

28 point twenty-four chains east of the northwest corner of said section Ten; thence south twenty degrees west ten chains; thence south forty-three degrees east twenty chains to a stake at traverse corner, which is the beginning of the tract so leased and herein located; thence south sixty degrees west eight and five-tenths chains; thence south five chains; thence south forty-five degrees east ten chains; thence south forty degrees west one and sixty-two one-hundredths chains; thence west thirty-four and fixty-six one-hundredths chains to stake on traverse line; thence north thirty degrees east thirteen and eight one-hundredths chains along traverse line; thence north seventy-eight degrees east along traverse line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres, more or less, a stake being set at each corner of said tract, and being the same land surveyed out and the lines and corners marked by the Lessors on April 24, 1910, under their file and claim under the Placer Mining Laws of the United States as appears from the said

location recorded in the Conveyance Records of Caddo Parish, Louisiana; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, Range Sixteen, being a long narrow strip of land running along the south line of said sections and known as the "Green Mineral File"; and,

Whereas, the said Standard Oil Company of Louisiana, the obligee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said three pieces of land above described, and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company:

Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United  
 29 States of America, and to all the entry other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the credit of and purchased from other and third persons claiming to be interested therein, but

only to cover and embrace the oil run therefrom to the credit of and purchased from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING  
COMPANY,

(Signed) By T. W. PHILLIPYS,  
(Seal) Its President.

Attest:

(Signed) W. J. HIGGINS, Its Secretary.  
AMERICAN SURETY COMPANY  
OF NEW YORK,

(Signed) By LEON R. SMITH,  
(Seal) Resident Vice-President.

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

(Signed) W. B. CARLON,  
(Signed) C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

(Signed) J. E. JOHNSTON, JR.,  
(Signed) GEO. G. DIMICK.

Approved:

J. C. PUGH.

(Copy).

State of Louisiana,  
Parish of Caddo.

Know all men by these presents, that we, The Pure Oil Operating Company, as principal and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in the full sum of Fifty Thousand (\$50,000.00) Dollars, for the payment of which we bind ourselves, our successors and legal representatives, firmly and in solido by these presents.

Dated at Shreveport, Louisiana, this 15th day of June, in the year of our Lord, One Thousand Nine Hundred and Fourteen.

The conditions of the above obligation is such that:

Whereas, the said Pure Oil Operating Company as the lessees of L. Hanszen, et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three (3) and Four (4), Township 20, North, Range 16 West, being the same tract of land located under the placer mining laws by the lessors on April 2nd, 1910, as appears from the said location recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ

of error sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said Pure Oil Operating Company; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hanszen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Two, Township Twenty, North, Range Sixteen West, and being more particularly described as follows:

31 Beginning at a point twenty-four chains East of the Northwest corner of said Section Ten; thence South twenty degrees west ten chains; thence south forty-three degrees East twenty chains to a stake at traverse corner, which is the beginning of the tract so leased and herein located; thence south sixty degrees west eight and five-tenths chains; thence south five chains; thence south forty-five degrees East ten chains; thence South forty degrees West one and sixty-one one-hundredths chains; then West thirty-four and fifty-six one-hundredths chains to stake on traverse line; thence North thirty degrees East thirteen and eight one-hundredths chains along traverse line; thence north seventy-eight degrees East along traverse line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres more or less, a stake being set at each corner of said tract, and being the same land surveyed out and the lines and corners marked by the lessors on April 24th, 1910, under their file and claim under the Placer Mining Laws of the United States, as appears from said location, recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, patent has not yet been obtained under the said mining locations; and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections three and four, Township twenty, Range Sixteen, being a long narrow strip of land running along the South Line of said sections and known as the "Green Mineral File"; and,

Whereas, the said Standard Oil Company of Louisiana, the obligee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said three pieces of land above described, and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company.

Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United  
32 States of America, and to all and every other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the credit of and purchased from other and third persons claiming to be interested therein, but only to cover and embrace the oil run therefrom to the



credit of and purchase from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING  
COMPANY,

By E. H. JENNINGS,

(Seal)

Its President.

AMERICAN SURETY COMPANY  
OF NEW YORK,

By LEON R. SMITH,

(Seal)

Resident V-Pres.

Attest:

W. J. HIGGINS,

Its Secretary.

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

W. B. CARLON,

C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

N. C. BLANCHARD,

GEO. G. DIMICK.

Approved:

J. C. PUGH.

(Copy).

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, R. L. Stringfellow, as principal, and Southwestern Surety Ins. Co., of Okla., as surety, are held and firmly and in solido bound unto the Standard Oil Company of Louisiana, in the sum of Fifteen Hundred (\$1,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 6th day of January, 1913.

Now the condition of the above obligation is such that:

Whereas, the above bounden R. L. Stringfellow claims to be the owner of an undivided one-fourth of one-eighth ( $1/4$  of  $1/8$ ) of all oil that has been saved from that produced on that certain tract of land known as the Hanszen 87 acre Mineral Claim, located partly in Section Three (3) and partly in Section Four (4), Township Twenty (20), Range Sixteen (16), which said land is being developed for oil and gas, under an oil and gas lease by the Pure Oil Operating Company; and

Whereas a portion of the oil produced from said land has been run by the Standard Oil Company of Louisiana, and the said above bounden R. L. Stringfellow claims to be entitled to one-fourth of one-eighth ( $1/4$  of  $1/8$ ) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and

Whereas the said R. L. Stringfellow and his co-locators have not secured a patent to said lands; and

Whereas, the ownership of the said land is claimed by the Producers Oil Company;

Now, therefore, if the said above bounden R. L. Stringfellow shall hold the Standard Oil Co. of Louisiana harmless against all claims which may be asserted by the United States Government, or by the Producers Oil Company, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Stringfellow, under his said claim as owner of an undivided interest in said oil, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

34 This bond being given by the said R. L. Stringfellow for the lease and payment to him of an undivided interest in the proceeds of, oil run from said above described lands, in addition to bonds heretofore furnished and securities heretofore given for the payment to him of money under his aforesaid claim.

(Signed)

R. L. STRINGFELLOW, (Seal)  
SOUTHWESTERN SURETY INS.  
CO. OF OKLA.,

A. C. BODENHEIMER,

Agent and attorney in fact.

Approved:

PUGH & FILLILOVE.

## "DEFENDANT EX. E."

Fidelity & Deposit Company of Maryland,  
Home Office, Baltimore, Md.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, H. E. Barnes and H. L. Heilperin, as principals, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto and in favor of the Standard Oil Co. of Louisiana, in the full sum of Two Thousand and No/100 Dollars (\$2,000.00), for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, legal representatives, successors and assigns firmly and in solido by these presents.

Dated at Shreveport, La., this 27th day of August, 1912.

The condition of the above obligation is such that, whereas, the said H. E. Barnes, together with R. L. Stringfellow, Sam W. Mason, D. P. Eubank and L. Hanszen, did on the 2nd day of April, 1910, take possession and locate under the place mining laws of the United States, a tract of land containing 87.9 acres of land situated in Sections 3 and 4, Township 20, North, Range 16 West, which said tract was subsequently leased under an oil and gas lease to E. H. Jennings, who subsequently assigned the said lease to the Pure Oil Operating Company; and

Whereas, the said H. E. Barnes, as the owner of an undivided one-fourth interest in said property, subsequently sold to H. L. Heilperin an undivided one-half interest in the said undivided one-fourth interest; and

Whereas, the Standard Oil Company of Louisiana has been purchasing from the Pure Oil Operating Company, its lessor, the oil produced from the said land and is still running the said oil as purchaser;

Now, therefore, this bond is given as surety and indemnity to protect the said Standard Oil Company of Louisiana from any liability, loss or damage, whatsoever, to the United States or to any person or corporation by reason of its purchase or handling of said oil; and

Therefore, if the said Barnes and the said Heilperin shall well and trully indemnify and make good to the said Standard Oil Co. of Louisiana, any liability, loss or damage by reason of the purchase of the oil from the said mineral location, then this obligation to be null and void; otherwise to remain in full force and effect.

(Signed)

(Signed)

(Seal)

H. E. BARNES,

H. L. HEILPERIN,

FIDELITY & DEPOSIT CO. OF  
MARYLAND,

D. T. LAND,

PHILIP LIEBER,

Agents and Attorneys in Fact.

Approved:

J. C. PUGH.

(Copy).

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That, we, H. E. Barnes and H. L. Heilperin, as principals, and the Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in the full sum of One Thousand (\$1,000.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, legal representatives, successors and assigns, firmly and in solido by these presents.

Dated at Shreveport, La., this 16th day of May, 1912.

The condition of the above obligation is such that:

Whereas, the said H. E. Barnes, together with R. L. Stringfellow, Sam W. Mason, D. P. Eubank, and L. Hansen, did on the second day of April, 1910, take possession and locate under the placer mining laws of the United States a tract of land containing 87.9 acres of land situated in Section 3 and 4, Township 20 North, Range 16 West, which said tract was subsequently leased under an oil and gas lease to E. H. Jennings, who subsequently assigned the lease to the Pure Oil Operating Company and

Whereas, the said H. E. Barnes, as the owner of an undivided one-fourth interest in said property, subsequently sold to H. L. Heilperin an undivided one-half interest in the said undivided one-fourth interest; and

Whereas, the Standard Oil Company of Louisiana has been purchasing from the Pure Oil Operating Company, lessee and its lessors, the oil produced from the said land and is still running the said oil as purchaser;

Now, therefore, this bond is given as surety and indemnity to protect the said Standard Oil Company of Louisiana from any liability, loss or damage, whatsoever to the United States or to any person or corporation  
 37 by reason of its purchase or handling of said oil; and

Therefore, if the said Barnes and the said Heilperin shall well and truly indemnify and make good to the said Standard Oil Company of Louisiana any liability, loss or damage, by reason of the purchase of the oil from the said mineral location, then this obligation is to be null and void; otherwise to remain in full force and effect.

(Signed) H. L. HEILPERIN,

(Signed) H. E. BARNES,

(Seal)

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

By D. T. LAND,

PHILIP LIEBER,

Agents and Attys. in fact.

Approved:

J. C. PUGH.

## "DEFENDANT EX. G."

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents, that we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents, to pay,

Dated at Shreveport, Louisiana, this 5th day of June,  
A. D. 1914.

Now, the condition of the above obligation is such that:

Whereas, the above bounden, Sam W. Mason, claims to be the owner of an undivided one-sixty-fourth ( $1/64$ ) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in sections 3, 4 and 10, Township 20, North, Range 16, West; said properties fully described in Book 59 of Conveyances of Caddo Parish, Louisiana, page 355 and 387, and to which reference is hereby had, and which properties are being operated for the production of oil by the Pure Oil Operating Company; and,

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounded, Sam W. Mason, claims to be entitled to  $1/64$  interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,



Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said wells, as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden, Sam W. Mason, shall hold the Standard Oil Company of Louisiana harmless against all claims that may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,  
(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH.  
R. WOLF.

Approved:

J. C. PUGH & SON.

## "DEFENDANT EX. H."

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of two thousand five hundred (\$2,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 9th day of February, A. D. 1914.

Now, the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 355 and 387, and to which reference is hereby had and which said properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said well on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company is taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security:

41 Now, therefore, if the said above bounden, Sam W. Mason, shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,  
(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,  
CREA PUGH.

Approved:

J. C. PUGH.

## "DEFENDANT EX. I."

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, D. P. Eubank, as principal, and the United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Twenty-five Hundred (\$2,500.00) Dollars, which said sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 14th day of June, 1913.

Now the condition of the above obligation is such that:

Whereas, the above bounden D. P. Eubank claims to be the owner of an undivided one-sixty-fourth ( $1/64$ ) interest in and to what is known as Lease No. 64, on the Hanszen-Matthews Farm in Section three (3) and four (4), Township 20, North Range 16 West, and also an owner of an undivided one-sixty-fourth ( $1/64$ ) interest in and to what is known as Lease No. 65, on the Hanszen-Matthews Farm in Section 10, Township 20 North, Range 16 West, in Caddo Parish, Louisiana; and

Whereas, the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounden D. P. Eubanks claims to be entitled to the one-sixty-fourth ( $1/64$ ) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana, from each of the above wells; and

Whereas, by the contract under which the Standard Oil Company of Louisiana, is taking said oil from said well,

as aforesaid, the said D. P. Eubank has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security.

Now, therefore, if the said above bounden D. P. Eubank shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the  
 43 said Standard Oil Company of Louisiana shall pay to the said D. P. Eubank, under his said claim as owner of an undivided one-sixty-fourth (1/64) interest in said oil secured from each of the above wells, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) D. P. EUBANK. (Seal)  
 UNITED STATES FIDELITY &  
 GUARANTY CO.,

(Signed) By WILLIAM H. KLINE SMITH,  
 Its Atty. in Fact.

Witnesses to signature of D. P. Eubank:

(Signed) J. S. PETERS,  
 T. S. WHITE.

Witness:

E. P. HURMIN.

State of Louisiana,  
 Parish of Caddo.

Before me, Sam W. Mason, a notary public, in and for Caddo Parish, State of Louisiana, duly commissioned and qualified, personally came and appeared D. P. Eubank who acknowledged to me that he has signed the above and foregoing bond on the day same bears date.

Given under my seal and signature of office, this, the  
17th day of June, A. D. 1913.

(Signed) SAM W. MASON,

Notary Public in and for Caddo  
Parish, Louisiana.

Approved:

J. C. PUGH.

Witness:

J. S. PETERS

T. S. WHITE.

44

"DEFENDANT EX. J."

Copy.

State of Louisiana,  
Parish of Caddo.

Know all men by these presents: That we, H. L. Heilperin and H. E. Barnes, as principal, and J. A. Thigpen and S. L. Herold, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana in the sum

of Five Thousand (\$5,000.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents, to pay.

Dated at Shreveport, Louisiana, this 25th day of January, A. D. 1914.

Now the condition of the above obligation is such that:

Whereas, the Pure Oil Operating Company claims to have a lease on two tracts of land in Caddo Parish, under

assignments of lease from E. H. Jennings, the said Jennings having leased one of said tracts from L. Hanszen and others on tract of land located by said lessors under the Placer Mining Laws on April 2, 1910, and fully described in notice of location in Conveyance Book 59, Page 267, of the records of Caddo Parish; and the other lease having been executed to said Jennings by L. Hanszen and others on the tract of land containing thirty-seven acres in the Northwest  $\frac{1}{4}$  of Section 10, Township 20 North, Range 16 West; the said tract having also been located by the said lessors under the Placer Mining Laws of the United States, on which said company has drilled wells producing oil.

Whereas, the oil from said wells is being run by the Standard Oil Company of Louisiana, and the above bounden H. L. Heilperin and H. E. Barnes claim a royalty jointly of one-thirty-second ( $\frac{1}{32}$ ) of the oil produced from said wells under the terms of the lease made by E. H. Jennings, as per said contracts, and

Whereas, by the contract under which the Standard Oil Company of Louisiana is taking said oil from  
 45 said wells, as aforesaid, the said H. L. Heilperin and H. E. Barnes have the right to withdraw their part of the proceeds from said oil run from said wells by executing bond with approved security:

Now, therefore, if the said bounden H. L. Heilperin and H. E. Barnes shall hold the said Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants whatever to said property, or to the oil produced therefrom, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said H. L. Heilperin and H. E. Barnes, together with all damages and costs, then

and in such event, this obligation to be null and void, otherwise to remain in full force and effect.

Thus done and signed in the presence of the undersigned witnesses on this the 25th day of January, A. D. 1914.

H. L. HEILPERIN,  
H. E. BARNES,  
J. A. THIGPEN,  
S. L. HEROLD.

Witnesses:

E. G. COLLINS  
WHEELER SHROPSHIRE.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917.

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46 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

I.

Now into this Honorable Court comes the United  
States of America, plaintiff in the above numbered and



entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

## II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

## III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 12, and the prayer of said answer.

## IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

## VI.

Plaintiff shows, in the alternative, that even if the said defendants are entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

## VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.

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48 In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,  
vs. No. 1171 In Equity.  
Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

And now come the defendants, Mrs. Lydia Hanszen Mc-  
Mullen, divorced wife of J. A. McMullen, H. Earl Barnes,  
Sam W. Mason, Robert L. Stringfellow, Dillard P. Eu-  
bank, Pure Oil Operating Company, and J. A. Thigpen  
and S. L. Herold, as liquidators of the Natalie Oil Com-  
pany, in the above entitled and numbered cause, and move  
the Court for leave to amend their answer, as will appear

in the amended answer herewith filed. That said amendments are material and necessary to a proper defense of the case; that the matter as amended and the amendments offered were not incorporated in the original answer because of the fact that counsel for defendants had not at the time within which the answer was due accurate knowledge of the facts stated in the amendments.

Wherefore, they pray that said amendments be allowed and considered a part of the answer upon the hearing of this cause.

THIGPEN & HEROLD,  
BARNETTE & BLANCHARD,  
Attorneys for Defendants.

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49      In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs.      No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

This cause coming on to be heard on the motion of de-  
fendants to amend their answer, and both parties having  
appeared, and the Court being fully advised of the amend-  
ments sought to be made to the answer of the defendants  
heretofore filed in this cause, it is hereby ordered, ad-

judged and decreed that the motion be granted and that the amendments as set forth in the motion be allowed; and the clerk of the Court is hereby ordered to file the same as of the date of this order, as amendments to the original answer.

Thus done and signed at Chambers, at Shreveport, Louisiana, on this the 31 day of Oct., 1917.

GEO. WHITFIELD JACK,

United States District Judge.

50            In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs.            No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

Amended answer of Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants in the above entitled and numbered cause.

Now come the said defendants, and, with leave of this Court first had and obtained, file this amendment to the answer heretofore filed, as follows:

Defendants amend Article IX of their original answer so as to read as follows:

## IX.

Your defendants would show that in its operations on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom, up to the 31st day of July, 1917, fifty thousand seven hundred and eight & 5/100 (50,708.05) barrels of oil, of the market value of Forty Thousand Six Hundred and Ninety-five & 80/100 (\$40,695.80) Dollars, one-eighth of which oil of the market value of Five Thousand and Eighty-six & 97/100 (\$5,086.97) Dollars was delivered to said locators under the stipulations of the lease, and the remainder retained by the said Pure Oil Operating Company for its own use as owner, all of which it had the right to do.

Defendants amend Article XII of their original answer so as to read as follows:

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## XII.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the mineral therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that said wells were drilled in good faith and under such belief.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is

the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for the the value of any oil extracted therefrom.

And defendants show that the actual cost to your defendant, Pure Oil Operating Company of the drilling and equipping of said wells was the sum of twenty-eight Thousand, Eight Hundred and Sixty-five & 49/100 (\$28,865.49) Dollars; and that the actual cost to your defendant of the operation of said wells for the production of oil up to and including July 31st, 1917, amounted to Thirty Thousand One Hundred and Sixty-two & 74/100 Dollars (\$30,162.74).

Wherefore, reaffirming the allegations and prayer of their original answer filed herein, defendants pray for judgment as originally prayed for.

THIGPEN & HEROLD,  
BARNETTE & BLANCHARD,  
Attorneys for Defendant.

Indorsed:—Amendment to Answer. Filed Oct. 31, 1917.

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In the District Court of the United States, for  
the Western District of Louisiana, Shreve-  
port, Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

### I.

Now into this Honorable Court comes the United  
States of America, plaintiff in the above numbered and  
entitled cause, appearing herein and represented by its  
Solicitor, Robert A. Hunter, Special Assistant to the  
Attorney General, and for reply to set off and counter-  
claim asserted by defendant the Pure Oil Operating  
Company in the amended answer herein, shows:

### II

That plaintiff renews and reaffirms the allegations  
and prayer of the original bill of complaint filed herein.

### III.

Plaintiff denies all the allegations of the said amended  
answer relating to said set off and counter claim, and  
particularly paragraph 12, and the prayer of said  
amended answer.

## IV.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

## VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

## VIII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Indorsed:—Plaintiff's Reply to Set Off and Counter Claim of Defendant (Pure Oil Operating Company) in the Amended Answer. Filed Nov. 5, 1917.



54 In the District Court of the United States for  
the Western District of Louisiana, Shreve-  
port Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen H. Earl  
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-  
lard P. Eubank, Pure Oil Operating Company, Na-  
talie Oil Company, Gulf Refining Company of Lou-  
isiana, Standard Oil Company of Louisiana, Defend-  
ants.

And now comes the Standard Oil Company of Louisi-  
ana, made one of the defendants in the above cause, and  
availing itself of the reservation made in its answer, now  
moves the Court to dismiss the Bill filed in this cause  
as against this defendant, because said Bill does not  
state any matter of equity entitling plaintiff to the re-  
lief prayed for, nor are the facts as stated sufficient to  
entitle plaintiff to any relief against this defendant.

Wherefore, this defendant prays the judgment of this  
Court on the matter herein submitted, and that the suit  
as against it be dismissed with cost.

J. C. PUGH & SON,  
Solicitors for Standard Oil  
Co. of La.

Indorsed:—Motion to Dismiss as to the Standard Oil  
Company of Louisiana. Filed Feb. 27, 1918.

B

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27 A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1171 In Equity.

Mrs. Lydia H. McMullen, et al.

In this cause, now into Court comes the Standard Oil Company, one of the defendants herein, and files its Motion to Dismiss.

Thereupon, the said Motion to Dismiss of the Standard Oil Co. and the Motion to Strike Out Certain Interrogatories, came on to be heard—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as solicitor for the complainant, and Judge J. C. Pugh, Mr. Leon R. Smith and Wm. C. Barnette appearing for defendants. The motions were argued and submitted and thereupon the Court overruled the Motion to Dismiss, to which ruling of Court defendants excepted. The motion to strike out certain interrogatories was sustained by the Court, with leave for the complainant to renew said interrogatories at such time as it may seem proper.

## Equity Journal, Vol. 1.

United States District Court, Western District of  
Louisiana.

Thursday, Shreveport, La., Feb. 28, 1918.

Court met pursuant to adjournment and was ordered  
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S.  
Judge.

United States of America,

vs.

No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, et als.

This cause came on this day to be heard, according to  
previous assignment, upon the Motion to Dismiss hereto-  
fore filed by the Gulf Refining Company, one of the de-  
fendants herein—Mr. Robert A. Hunter, Special Assist-  
ant to the Attorney General, appearing as Solicitor for  
Complainant, and Mr. S. L. Herold appearing as Solici-  
tor for defendant. The said Motion to Dismiss was argued,  
submitted and overruled by the Court.

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Equity Journal, Vol. 1.

United States District Court, Western District of  
Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered  
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1171 In Equity.  
Mrs. Lydia H. McMullen, et al.

This cause came on this day to be heard upon the Pleas filed by defendants—Mr. Robert A. Hunter, appearing as solicitor for Complainant, and Mr. S. L. Herold appearing for defendants. The matter was argued, submitted and taken under advisement by the Court.

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Equity Journal, Vol. 1.

United States District Court, Western District of  
Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,  
vs. No. 1171 In Equity.  
Mrs. Lydia Hanszen McMullen, et al.

In this cause, which cause has heretofore been argued upon the pleas filed by defendants, and submitted, counsel on either side being now present in open Court, Deci-

sion is orally rendered overruling said pleas of defendants, with the right reserved to defendants to renew said pleas upon the trial of the case on the merits.

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58 (INTERROGATORIES PROPOUNDED BY PLAINTIFF TO THE PURE OIL OPERATING COMPANY, THE GULF REFINING COMPANY OF LOUISIANA AND THE STANDARD OIL COMPANY OF LOUISIANA).

(1).

In the answer of the Pure Oil Operating Company to the bill of complaint herein, it is stated that said Company drilled the wells known as Hanszen Pure Oil Operating Company's Nos. 1 and 5. State when said wells were commenced and when they were completed.

(2).

In the amended answer of the Pure Oil Operating Company, it is stated that the production of oil from the land in controversy to July 31, 1917, was 50,708.05 barrels of oil, of the value of \$40,695.80. State whether or not the production of said wells as given in said amended answer is exact or estimative.

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(3).

State the total production of oil from the said wells up to July 31, 1917, and (b) from July 31st, 1917, to January 1, 1918. Please state separately the production of each of said wells during said periods.

(4)

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5)

Was a separate and complete record kept by the Pure Oil Operating Company of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6)

If the production as given by you in your answer in the bill of complaint and in your answers to the preceding interrogatories is based on an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the wells in suit.

(7).

State the total market value of the oil produced by the Pure Oil Operating Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(8)

Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil

Operating Company to the Gulf Refining Company of Louisiana, and that after March 1, 1912, the production of said wells was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom.

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(9).

State the quantity and value of the oil extracted from the land in controversy, which was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana.

(10)

State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

(11)

What was the total price received by the Pure Oil Operating Company for all the oil produced by the wells in controversy. Please state separately the prices received by the Pure Oil Operating Company from the Gulf Refining Company of Louisiana, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana, for the oil extracted from the land in suit, and sold to said Companies, respectively.

(12)

Was not the said oil sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana delivered to said Gulf Refining Company on the land

where it was produced, that is, on the property in controversy, by transfer from a tank or tanks, in which the oil was stored, to a pipe line belonging to the Gulf Refining Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Gulf Refining Company of Louisiana?

(13)

Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

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(14).

What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

(15)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

(16)

Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana, went



upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Gulf Refining Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(17).

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipeline run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

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(18).

In the answer of the Standard Oil Company to the bill of complaint herein, it is stated that 168,066.94 barrels of oil of the value of \$166,251.33 was taken by it from

the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the wells in suit, and other wells not in suit, then state the names and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the wells involved in this suit.

(19)

State the quantity and value of all the oil taken and removed by the Gulf Refining Company of Louisiana from the land involved in this suit.

(20)

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$105,021.49 has been paid to the claimants of said oil, and that \$51,229.84 is held for payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

(21).

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time said

oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(22)

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

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(23).

What are the principal products manufactured from petroleum, or crude oil?

(24)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(25)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

(26)

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(27).

If in answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil, or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(28).

How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom

said royalties were paid, or for whose account they are now being held.

ROBERT A. HUNTER,  
Special Assistant to the  
Attorney General.

Note: All of the above interrogatories, except Nos. 18, 20, 21, 22, 23, 24, and 25, 27 to be answered by the Pure Oil Operating Company.

Interrogatories 8, 9, 12, 14, 16, 19, 22, 23, 24, 26, 27 and 28 are to be answered by the Gulf Refining Company of Louisiana, and no other interrogatories are to be answered by that Company.

Interrogatories Nos. 8, 10, 13, 15, 17, 18, 20, 21, 23, 25, 26 and 28 are to be answered by the Standard Oil Company of Louisiana, and no other interrogatories are to be answered by that Company.

Indorsed: Interrogatories to be Answered by the Pure Oil Operating Company, The Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana. Filed Feb. 2, 1918.

65 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1171 In Equity.  
Mrs. Lydia Hanszen McMullen, et al., Defendant.

In the above entitled matter now comes the Standard Oil Company of Louisiana, one of the defendants here-

in, through its undersigned counsel, and suggesting to the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are interrogatories Nos. 25 and 26, as follows:

Interrogatory No. 25: State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

Interrogatory No. 26: State the total profits made by you (a) from the sale or any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

Now this defendant avers that it will fully appear by the petition and answer herein that the only issuable facts between the plaintiff and this defendant is the value of the oil bought by it from the property in dispute, the ownership of which is claimed by plaintiff; that from the issues so made up the answers to these two interrogatories could in no way tend to support the demands of the plaintiff against this defendant, and are, therefore, irrelevant and immaterial to any issues involved in said cause as between the plaintiff and this defendant, and an answer thereto would not illicit any fact or facts material to the support of plaintiff's action, and that said interrogatories should be stricken out.

66           Wherefore, this defendant prays that after due consideration said two interrogatories be stricken out and that this defendant be dispensed with the necessity of answering the same.

It prays for all rules, orders and decrees needful, and for cost and general relief.

J. C. PUGH & SON,  
Atty. for Standard Oil Co. of La.

Indorsed:—Motion of defendant, Standard Oil Company of Louisiana to Strike Out Interrogatories Nos. 25 and 26. Filed Feb. 6, 1918.

B.

67 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1171, In Equity.  
Mrs. Lydia Hanszen McMullen, et al., Defendants.

In the above numbered and entitled cause, now comes the Pure Oil Operating Company, through W. J. Higgins, its Treasurer, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Well No. 1 commenced April 30th, 1910, completed September 10th, 1910; Well No. 5 commenced November 15, 1913, completed January 17th, 1914.

To Interrogatory No. 2, defendant answers:

The production of said wells as given in said amended answer is estimative. The production of oil run from the land in controversy for account of this defendant up to August 1st, 1917, was 50,708.05 (7/8 of the total production), of the value of \$40,695.80.

To Interrogatory No. 3, defendant answers:

(a) Up to August 1st, 1917, the number of barrels of oil run from the land in controversy, for account of this defendant, was 50,708.05 (7/8 of the total production) of the value of \$40,695.80;

(b) From August 1st, 1917, to January 1st, 1918, the number of barrels of oil run from the land in controversy, for account of this defendant, was 504.46 barrels of oil of the value of \$1001.75.

The estimated production run for account of this defendant from Wells Nos. 1 and 5 was as follows:

To August 1st, 1917. From Aug. 1, 1917.		
Well No. 1 ....	44,010.70 bbls.	387.27
Well No. 5 ....	6,697.35 bbls.	54.13
	<hr/>	<hr/>
	50,708.05 bbls.	441.40

68 To Interrogatory No. 4, defendant answers:

Well No. 1 was run in connection with Well No. 4 (which is not involved in this suit) from January, 1916, to August 1st, 1917.

Well No. 5 was run in connection with Well No. 2 (which is not involved in this suit) from January, 1916, to August 1st, 1917.

To Interrogatory No. 5, defendant answers:

No.

To Interrogatory No. 6, defendant answers:

The total run from Wells Nos. 1, 2 (not involved in this suit), 4 (not involved in this suit) and 5, for account of this defendant (or 7/8—the remaining 1/8 being for account of its lessors) up to August 1st, 1917, was as follows:



No. 1, from October, 1910, to December, 1915, inc. ....	41,657.03 bbls.
No. 4 (not involved in this suit) produced 63,450.93 barrels before it was run in connection with Well No. 1.	
Nos. 1 and 4, from January, 1916, to August, 1917 .....	7,061.02
Nos. 5 from January, 1914, to December, 1915, inc. ....	5,564.38
Nos. 2 and 5 from December, 1915, to August, 1917 .....	7,930.80

(b) The production from the wells in controversy was estimated by dividing the combined runs in the proportion of the estimated daily capacity of the wells.

To Interrogatory No. 7, defendant answers:

The estimated number of barrels of oil run from said wells, for account of this defendant, up to January 1st, 1918, was 51,149.45 barrels, of the value of \$41,572.33. The value as given is approximate to this extent: it is the exact value of the estimated number of barrels, based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 8, defendant answers:

Its 7/8 of the production of the wells in suit was sold to the Gulf Refining Company of Louisiana up to the first of March, 1912, and subsequent to that date, to the Standard Oil Company of Louisiana; 7/8 being the interest owned by this defendant.

To Interrogatory No. 9, defendant answers:

17,989.73 barrels of oil of the value of \$10,227.80.

69 To Interrogatory No. 10, defendant answers:  
33,159.72 barrels of oil of the value of \$31,344.53.

To Interrogatory No. 11, defendant answers:

The total price received by this defendant for its 7/8 of the oil produced by the wells in controversy was \$41,572.33, \$10,227.80 being received from the Gulf Refining Company of Louisiana, and \$31,344.53 from the Standard Oil Company of Louisiana.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 13, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana, for account of this defendant, was 17,989.73 barrels of oil of the value of \$10,227.80, up to March 1st, 1912.

To Interrogatory No. 15, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana, for account of this defendant, up to January 1st, 1918, was \$33,159.72 barrels of the value of \$31,344.53.

To Interrogatory No. 16, defendant answers:

Yes.

To Interrogatory No. 17, defendant answers:

Yes.

To Interrogatory No. 19, defendant answers:

The quantity of oil taken and removed by the Gulf Refining Company of Louisiana from the wells involved in the suit, for account of this defendant, was 17,989.73 barrels of the value of \$10,227.80.

To Interrogatory No. 26, defendant answers:

The actual cost to this defendant of drilling, equipping and operating said wells up to August 1st,

1917, was .....	\$59,028.23;
70 Forward .....	\$59,028.23

The Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana purchased from this defendant its 7/8 of the total production of said wells, or 50,708.05, up to August 1st, 1917, for ..... 40,695.80

Or a net loss to August 1st, 1917 ...:..... \$18,332.43

To Interrogatory No. 28, defendant answers:

No moneys were paid out as royalty by this defendant to any of the other defendants herein, but in accordance with its lease from said co-defendants, this defendant delivered as royalty in tanks, from which the oil was purchased by the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, to the credit of the said lessors, one-eighth of the oil produced from said wells, which said oil was sold by the said co-defendants to the said pipe line companies, part of which, defendant is informed, said purchasing companies have paid, and other parts of which, according to defendant's information, said purchasing companies are holding, pending the result of this suit; the amounts paid and the amounts withheld being unknown to this defendant.

The total value of the oil extracted from said land, for account of this defendant, up to January 1st, 1918, was \$41,572.33, of which amount it has received \$31,037.41, the remaining \$10,534.92 being held by the Standard Oil Company of Louisiana, to the credit of this defendant, pending the result of this suit.

W. J. HIGGINS.

Sworn to and subscribed before me on this the 13th day of April, 1918.

HILDA R. SAUER,

(Seal)

Notary Public in and for Allegheny County, Penn.

My commission expires at end of next session of Senate.

Answer of Pure Oil Operating Company to Interrogatories. Filed Apr. 20, 1918.

B

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71 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant.

vs.

No. 1168, In Equity.

Mrs. Lydia Hanszen McMullen, et al., Defendant.

In the above entitled matter Amos K. Gordon, Secretary and Treasurer of the Standard Oil Company of Louisiana, appears and answers the interrogatories propounded to the Standard Oil Company of Louisiana, (except Nos. 25 and 26—a motion having been made to strike them out) as follows:

Interrogatory No. 8: Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1st, 1912, the production of said wells was sold by the Pure Oil Operating Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it has no information as to the sale of oil from the property referred to prior to February 27, 1912, but on that date it began to take oil from the wells in question.

Interrogatory No. 10: State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement marked "Exhibit A" shows the quantity and value of the oil bought by it from the Pure Oil Operating Company from February 27, 1912, (date of first run) to August 1, 1917.

Interrogatory No. 12: Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company

of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

72 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, answers: Yes.

Interrogatory No. 15: What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, answers: That the annexed statement shows the quantity and value of the oil taken and removed by it from the property in controversy.

Interrogatory No. 17: Is it not a fact that an agent, representative or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the

agent of this defendant went on the land in controversy and gauged the oil bought by it in tanks supplied by the operator and run the same into its pipe line, as stated in said interrogatory.

Interrogatory No. 18: In the answer of the Standard Oil Company to the bill of complaint it is stated that 168,066.94 barrels of oil of the value of \$156,251.33 was taken from it by the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the wells in suit, and other wells not in suit, then state the names and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the wells involved in this suit.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the facts are as stated in its answer to this suit, which is on file and of record. This defendant bought the oil stored in tanks by the operator. It was advised that the oil was taken from the land in controversy, but it has no information as to the number of wells drilled on said property, or from what particular wells the oil in question was taken. Definite information as to this matter can be obtained from the operator.

Interrogatory No. 20: In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$105,021.49 has been paid to the claimants of said oil, and that \$51,229.84 is held for payment to the rightful owner. Please state the names and

addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

73 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement marked Exhibit "A", and the division and transfer orders marked Exhibit "B", annexed hereto, will give all the information inquired about in this interrogatory.

Interrogatory No. 21: State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged as the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

In answer to this interrogatory, the defendants, the Standard Oil Company of Louisiana, states: That it is engaged, and was at the time the oil was taken, in the manufacture and sale, as well as the production, of oil, but it is unable to state just what disposition was made of the oil purchased by it from said property; but the oil taken from the property in controversy having been of a light character was probably manufactured, although all the oil taken from wells in this locality was run into the pipe line and it could not be stated with certainty that this particular oil was manufactured.

Interrogatory No. 23: What are the principal products manufactured from petroleum, or crude oil?



In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the principal products manufactured from petroleum, or crude oil, are what is commercially known as gasoline, kerosene, engine distillate, lubricating oils of various grades, gas oil, fuel oil, paraffine and coke.

Interrogatory No. 28: How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement referred to will show all of the money paid to the royalty owners, and furnish such other information as is inquired about in this interrogatory.

A. K. GORDON,

Secretary and Treasurer.

Sworn to and subscribed before me on this the 8th day of February, 1918.

T. B. BEALE,

(Seal)

Notary Public, in and for the  
Parish of East Baton Rouge,  
Louisiana.

74      **Production Statement of the Pure Oil Operating Co. Wells, Located on Hanszen Mineral Claim, Sec. 3 and 4, Tp. 20, R-16, Caddo Parish, La., from Feb. 27, 1912, (Date of 1st Run) to August 1st, 1917, Showing Disposition made of the Funds due each Party at Interest.**

Name	Proportion	Paid under Bond	
		Barrels	Money
The Pure Oil Operating Co.	7/8	106,215.07	95,803.25
L. Hanszen	1/32 (Below)		
Sam W. Mason	1/64	2,626.03	2,441.40
D. P. Eubank	1/64	1,619.16	1,437.56
R. L. Stringfellow	1/32	1,493.59	1,141.61
Natalie Oil Company	1/32 (Below)		
H. E. Barnes and H. L. Heilperin	1/32	4,787.55	4,197.67
<b>Total</b>		<b>116,741.40</b>	<b>105,021.49</b>

Name	Payments Withheld		Total Production.	
The Pure Oil Operating Co.	40,842.53	40,916.78	147,058.60	136,720.03
L. Hanszen	5,252.009	4,882.82	5,252.09	4,882.82
Sam W. Mason			2,626.03	2,441.40
D. P. Eubank	1,006.90	1,003.86	2,626.06	2,441.42
R. L. Stringfellow	3,758.48	3,741.18	5,252.07	4,882.79
Natalie Oil Co.	464.54	685.20	464.54	685.20
H. E. Barnes and H. L. Heilperin			4,787.55	4,197.67
<b>Totals</b>	<b>51,325.54</b>	<b>51,229.84</b>	<b>168,066.95</b>	<b>156,251.33</b>

Compiled by J. W. C.  
 Checked by H. C. McC.  
 Typed by E. A. H.  
 Rechecked by H. C. McC.  
 and J. W. C.

## Exhibit "A."

75

## EXHIBIT "B."

Shreveport, La., Feb. 26, 1912.

To The Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of.....Wells Nos. 1 and up on the Hanszen Farm, Sec. 4, Township 20 R. 16 Caddo Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit to	Division of Interest.	Postoffice Address.
The Pure Oil Operating Co.	7/8	Pittsburgh, Pa.
L. Hanszen, Trustee for S. W.		
W. Mason, D. P. Eubank		
and Herself	1/16	Shreveport La.
H. E. Barnes	1/32	Shreveport La.
R. L. Stringfellow	1/32	Shreveport La.
Tank Nos. ....		

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this division order shall become the property of the Standard Oil Company

of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

- (1) By E. H. JENNINGS, Treasurer.
- (2) R. L. STRINGFELLOW,
- (3) SAM W. MASON,
- (4) H. E. BARNES,
- (5) D. P. EUBANK,
- L. HANSZEN.
- L. HANSZEN, Trustee.

Witness:

W. J. HIGGINS

S. L. CRONIN (2, 3, 4 & 5).

Approved:

J. C. PUGH.

76

March 1, 1916.

To The Standard Oil Company of La.:

The undersigned have this day sold 1/32nd interest in Wells Nos. 1 and up, on Hanszen Farm, Secs. 3 and 4, Tp. 20, R. 16, Caddo Parish, State of Louisiana, as below.

Interest.	Name.	Postoffice Address.
1/32	Natalie Oil Company	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tank Nos. ....

H. E. BARNES,  
ESTATE OF H. L. HEILPERIN,  
By MARX. BLUESTEIN,  
J. A. THIGPEN, Executors.

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,

By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,  
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.

77 Indorsed: Answer of Defendant, Standard Oil Co. of La., to Interrogatories. Filed Feb. 11, 1918.

78 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1171, In Equity.  
Mrs. Lydia Hanszen McMullen, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third Vice-President, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 8, defendant answers:

Not having information with respect to the same, this defendant cannot answer this interrogatory, except to report that up to March 1st, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company and locators to the Gulf Refining Company of Louisiana.

To Interrogatory No. 9, defendant answers:

17,989.73 barrels of oil, of the value of \$10,227.80, representing 7/8 of the production from said wells to March 1st, 1912.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

20,559.69 barrels of oil, of the value of \$11,688.91

To Interrogatory No. 16, defendant answers:  
Yes.

To Interrogatory No. 19, defendant answers:  
20,559.69 barrels of oil, of the value of \$11,688.91.

To Interrogatory No. 22, defendant answers:  
The Gulf Refining Company of Louisiana is not now, nor was it at the time of the purchase of the said oil, engaged in the manufacture of any products of oil.

To Interrogatory No. 23, defendant answers:  
Gasoline, kerosene and lubricating oils.

79 To Interrogatory No. 24, defendant answers:  
The Gulf Refining Company of Louisiana never manufactured any products from any oil extracted from the land in controversy.

To Interrogatory No. 26, defendant answers:  
The Gulf Refining Company of Louisiana made no profit from the sale of any of the crude oil extracted from the land in controversy. It purchased 20,559.69 barrels of oil, for its value, \$11,688.91, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of ten cents per barrel, or \$1,168.90, which represents the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company. No products manufactured.

To Interrogatory No. 27, defendant answers:  
(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company;

(b) Made no profit;



(c) Delivery was made to the Gulf Pipe Line Company at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same; of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 28, defendant answers:

The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil. It purchased the said 80 oil from the following parties in the following proportions, and paid for said oil in the same proportions, to-wit:

Pure Oil Operating Company		7/8
D. P. Eubanks	1/8 of 1/8	
S. W. Mason	1/8 of 1/8	
L. Hanszen	1/4 of 1/8	1/8
H. E. Barnes	1/4 of 1/8	
R. L. Stringfellow	1/4 of 1/8	

No royalty is being held up.

C. R. MINOR.

Sworn to and subscribed before me on this the 13th day of March, 1918.

(Seal) J. A. THIGPEN,  
Notary Public in and for Caddo  
Parish, Louisiana.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

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81 United States District Court, Western District  
of Louisiana.

United States,  
vs. No. 1171.  
Mrs. Lydia H. McMullen, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of this cause, the Court of its own motion appoints Edward E. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

22

No. 1171. PLFF. L.

H. H. Cook, Stenographer.  
Suit No. 1171.

C. R. vs. Lydia Hansen McMullen, et al.

Statement of the Oil Produced by Hansen Mineral Oil  
Wells Nos. 1 and 3 from October, 1910, to December  
31, 1917, and Value of the Oil.

	Barrels	Value.
Total Oil produced .....	38,688.74	\$67,770.89

Statement of Oil Run by the Gulf Refining Co. of Louisiana from October, 1910, to February 27, 1912, Divisions of Oil and Value.

Total		20,550.00	\$11,000.00
Lydia Hansen McMullen	1/32	682.00	\$65.20
Sam W. Mason	1/64	321.20	\$32.40
D. P. Eubanks	1/64	321.20	\$32.40
R. L. Stringfellow	1/32	682.00	\$65.20
H. E. Barnes	1/32	682.00	\$65.20

Value of Royalty paid by the Gulf Refining Co. of La. ....		\$1,000.00
Pure Oil Operating Co.	7/8	17,000.00
		\$10,000.00

Statement of Oil Run by Standard Oil Company of Louisiana from February 27, 1912, to December 31, 1917,  
Division of Oil and Value.

Total oil run		38,074.05	\$36,081.90
Lydia Hanszen McMullen	1/32	1,189.81	1,127.56
Sam W. Mason	1/64	594.90	563.78
D. P. Eubanks	1/64	594.90	563.78
R. L. Stringfellow	1/32	1,189.81	1,127.56
Natalie Oil Co. H. E. Barnes, and H. L. Heilperin	1/32	1,189.81	1,127.56
Value of Royalty paid and held in suspense by the Standard Oil Co. of Louisiana			\$4,510.24
Pure Oil Operating Co.	7/8	33,314.82	\$31,571.66
Total Royalty paid by the Gulf Refining Co. of La. and the Standard Oil Co. of La. and held in suspense by the Standard Oil Co. of La.			\$5,971.36
Total Oil and value repre- senting the Pure Oil Oper- ating Co.'s 7/8		51,304.52	41,799.46
Cost of drilling and equip- ing Wells Nos. 1 and 5.		\$26,306.38	
Cost of operating same to Dec. 31, 1917		\$28,610.32	\$54,916.70

Filed Jan. 21, 1919.

83

## Suit No. 1171.

## Summary.

Statement of Pure Oil Operating Company's 7/8 of Oil  
and Value from Hanszen Mineral No. 1 and 5, and  
Cost of Drilling, Equipping and Operating Same to  
December 31st, 1917.

Hanszen No. 1 as  
an Entity

Net Bbbls. Net Value.

October, 1910, to Dec. 1915 41657.03 \$30,628.21

Hanszen No 5  
as an Entity

January, 1914 to Dec. 1915 5564.38 4,969.04 \$35,597.25

Hanszen No. 1  
Operated with No. 4.

January, 1916, to Dec. 1917

35.5% Total production

and value ..... 2885.92 4,484.00 4,484.00

Hanszen No. 5  
Operated with No. 2.

January 1916 to Dec. 1917.

14.4% Total production

and value ..... 1197.19 1,718.21 1,718.21

Total 51304.52 \$41,799.46

1/8 Oil and value paid by Standard Oil Company of Louisiana and Gulf Refining Company of Louisiana.

No. 1	Cost of drilling and equipping	\$15,324.22	
No. 1	Cost of operating Aug. 1911,		•
	to Dec. 31, 1917 .....	18,512.56	
No. 5	Cost of drilling and equipping	10,982.16	
No. 5	Cost of operating July, 1914,		
	to Dec. 31, 1917 .....	10,097.76	\$54,916.70

Total.

Well No. 1	Not drilled—(Error)		
	Well commenced	Completed	Ceased
Well No. 2	June 20, 1911	Aug. 3, 1911	
Well No. 3	May 4, 1912	June 7, 1912	Jan., 1914
Well No. 4	Nov. 20, 1913	Dec. 31, 1913	
Well No. 5	Jan. 13, 1914	Feb. 25, 1914	Dry

84 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1171, In Equity.  
Mrs. Lydia Hanszen McMullen, et als., Defendants.

For defendant, Standard Oil Company of Louisiana, it is urged for exception to the Report of Special Master:

First: That a judgment should be awarded it against its co-defendants, who were called in warranty, so as to avoid a multiplicity of suits, and to finally terminate all of the issues between the respective defendants without the necessity of resorting to additional litigation.

Second: Interest should only have been allowed from the date of the finality of any judgment which may be rendered in this matter.

Wherefore, it prays that these exceptions be sustained and the recommendations of the Special Master be revised accordingly.

J. C. PUGH & SON,  
Attorneys for Defendant, Stand-  
ard Oil Company of La.

Indorsed:—Exception to Report of Special Master. Filed Jan. 23, 1919, 10:20 A. M. o'clock.

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85      In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs.      No. 1171, In Equity.  
Mrs. Lydia H. MacMullen, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

I.

That the Master in said report has certified and recommended that this defendant be held liable to the Government for the value of the oil purchased by it from the Pure Oil Operating Company and produced by that Com-

pany from the premises in controversy; whereas the Master should have held that no money judgment should be rendered against this defendant, since it was a mere purchaser of the oil produced by the said Pure Oil Operating Company.

## 2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered by it, as to the liability which the Master certifies as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

## 3.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

86           Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,

Solicitors for Gulf Refining Company of Louisiana.

Indorsed:—Exceptions of the Gulf Refining Company of Louisiana to the Report of the Special Master. Filed Jan. 30, 1919.

B.



Now comes the Pure Oil Operating Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January 1919 and for cause of exception shows:

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that date so withdrawn.

That the Master in said report has certified that the cost of drilling and equipping and operating said wells should not be deducted from the total value of the production from the property but that regardless of the amount of such expenses the Government is entitled to judgment for the value of all of the royalty oil; whereas the Master should have reported that the cost of drilling and equipping and operating the wells should be deducted from the total value of the whole production.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

judgment rendered against it at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for Pure Oil Oper-  
ating Co.

88 Indorsed:—Exceptions of the Pure Oil Oper-  
ating Company to the Report of the Special Mas-  
ter. Filed Jan. 30, 1919.  
B.

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89 In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia H. MacMullen, et al., Defendants.

Now come Mrs. Lydia H. McMullen, H. Earl Barnes, Sam W. Mason, R. L. Stringfellow, D. P. Eubank, and J. A. Thigpen and S. L. Herold, as liquidators of the

Natalie Oil Company, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

## 1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time their location was made; whereas he should have reported that said lands were not at that date so withdrawn.

## 2.

That the Master in said report has certified that the cost of drilling and equipping and operating said wells should not be deducted from the total value of the production from the property, but that, regardless of the amount of such expenses, the Government is entitled to judgment for the value of all of the royalty oil; whereas the Master should have reported that the cost of drilling and equipping and operating the wells should be deducted from the total value of the whole production.

## 3.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

90

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,

Solicitors for Defendants.

Indorsed:—Exceptions of Mrs. Lydia H. MacMullen, H. Earl Barnes, Sam W. Mason, R. L. Stringfellow, D. P. Eubank, J. A. Thigpen & S. L. Herold to the Report of the Special Master. Filed Jan. 30, 1919.  
B.

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91 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,  
vs. No. 1171.  
Mrs. Lydia Hanszen McMullen, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on

the docket of this Honorable Court, being plaintiffs exhibits "A" "B" "C" "D" "E" "F 1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T," which said exhibits were by agreement of counsel (record p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 22 North, Range 15 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

92           2. The answers of the defendants to the bill of complaint and the notice of mineral location offered by the defendants (record p. 36), show that the location was made on April 2, 1910. The testimony shows that the work leading to the discovery was not begun until April, 1910, actual drilling of the well having commenced July 15, 1910 (testimony of S. L. Cronin, record p. 28 to 46 inclusive).

Plaintiff avers that the drilling of said wells and the removal of oil from the said land, by the defendants, were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. There was affirmative evidence in the record showing that the defendants were not in good faith in extracting and removing the oil from the land in controversy, because the record shows that the defendants, including

the Pure Oil Operating Company (which said Company asserted counterclaim allowed by the Master), gave bonds to the Standard Oil Company of Louisiana to protect said Company against adverse claims to the property and to the oil. The bond executed by the Pure Oil Operating Company, for the sum of \$175,000.00, contained a specific agreement to indemnify and hold harmless the Standard Oil Company of Louisiana from liability to the United States of America (see bond attached to answer of the Standard Oil Company of Louisiana to the interrogatories filed herein).

5. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908 (see testimony of Sam W. Mason, one of the mineral locators, record p. 37); also testimony of S. L. Cronin, representative of the Pure Oil Operating Co., record p. 42). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a) Against the Pure Oil Operating Company and the Gulf Refining Co. of Louisiana, in solido for the value of the oil extracted by the Pure Oil Operating Co., and run from the land by the Gulf Refining Co. of Louisiana, less the royalties paid of \$1461.12, all as shown by the Master's report ..... \$10,227.79

(b) Against the Pure Oil Operating Co. and the Gulf Refining Co. of Louisiana, in solido, and each of the royalty claimants of the Gulf Refining Co. of Louisiana, in solido, with said companies, for the amounts paid to the several royalty claimants, all as shown by the Master's report, aggregating ..... \$1,461.12

(c) Against the Pure Oil Operating Co. and the Standard Oil Co. of Louisiana, in solido, for the value of the oil extracted by the Pure Oil Operating Company, and run from the land by the Standard Oil Co. of Louisiana, less the royalties paid of \$4510.24, all as shown by the Master's report ..... \$31,571.66

(d) Against the Standard Oil Co. of Louisiana and the Pure Oil Operating Co., in solido, and the several royalty claimants of the Standard Oil Co., of Louisiana, in solido with said companies, for the amounts paid to the said royalty claimants, all as shown by the Master's report, aggregating ..... \$4,510.24

Said sums aggregating \$47,770.81, being total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,  
Special Assistant to the Attorney  
General.

- 94 Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

B

- 95 United States of America,  
 vs. No. 1171, in Equity.  
 Mrs. Lydia H. McMullen, J. A. McMullen, H. Earl Barnes,  
 Sam W. Mason, Robert L. Stringfellow, Dillard P.  
 Eubank, Pure Oil Operating Company, Natalie Oil  
 Company, Gulf Refining Company of Louisiana, Stan-  
 dard Oil Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, he and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Number Three (3), of Section Three (3) and Lots Numbers Three, Four and Five (3, 4 and 5) of Section Four (4), in Township Twenty (20) North, of Range Sixteen (16) West Louisiana Meridian, Louisiana, containing thirty-seven and seventy-nine one-hundredths (37.79) acres, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, he and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or offer



form of appropriation under the public land or mineral laws of the United States.

III. That the mineral location of date April 2, 1936, recorded April 2, 1936, in Book 29, page 267, made by defendants, Mrs. Lydie Hansen, Sam W. Mason, William F. Edmund, H. East Barnes and Robert L. Stringfellow, and the lease made by said location April 29, 1936, to E. H. Jennings, recorded in Book 39, page 455, and

36 the transfer of said lease by said E. H. Jennings to the Pure Oil Operating Company, as yet not recorded in Book 46, page 465, all of said instruments having been recorded on the Conveyance records of the Parish of Cadeo, State of Louisiana, he and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and to that extent, the said mineral locations and leases are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Mrs. Lydie M. McMahon, J. A. McMahon, H. East Barnes, Sam W. Mason, Robert L. Stringfellow, William F. Edmund, Pure Oil Operating Company, Kelsie Oil Company, Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any claim upon plaintiff's title to the same, or to any of the oil, gas or

minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred Eighty-two and 64/100 (\$182.64) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby commanded and ordered to pay to plaintiff, the full sum of One Hundred Eighty-two and 64/100 (\$182.64) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and

Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Sixty-three and 78/100 (\$563.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

98 XIII. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to

plaintiff, the full sum of Five Hundred and Sixty-three and 78/100 (\$563.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIV. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XV. That the United States of America do have and recover of the Standard Oil Company, Natalie Oil Company and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVI. The rights of the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana to recover the royalties paid by them to the other defendants herein be, and the same are hereby reserved as set forth in the Master's report.

XVIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and

that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

99 XVIII. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XIX. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells, and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Thousand (\$5,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may

come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do  
 100 and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XX. That the rights of the Standard Oil Company of Louisiana against its warrantors be, and the same are hereby, reserved.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,  
 United States Judge.

Indorsed:—Decree. Filed Aug. 12, 1919.  
 B.

101      In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs.                      No. 1171, In Equity.  
Mrs. Lydia H. MacMullen, et al., Defendants.

The petition of Mrs. Lydia H. MacMullen, Sam W. Mason, D. P. Eubank, R. L. Stringfellow, H. E. Barnes, Natalie Oil Company and the Succession of H. L. Heilperin, defendants herein, shows:

1.

That they are aggrieved by the decree entered herein and signed by Your Honor on the .... day of August, 1919, condemning them in solido to pay to the Plaintiff the sum of Fifty-nine Hundred and Seventy-one and 36/100 (\$5,971.36) Dollars, together with five per cent (5%) per annum interest from January 11th, 1919, and all costs of suit; and aver that error has been committed in rendering of the said decree in this, to-wit:

2.

That the undisputed evidence as found and reported by the Master is to the effect that the oil produced and sold from the property in controversy aggregated the sum of Forty-seven Thousand Seven Hundred and Sixty-nine and 81/100 (\$47,769.81) Dollars, and that the cost of producing the said oil amounted to Fifty-four Thousand Nine Hundred and Sixteen and 70/100 (\$54,916.70) Dollars.

3.

That, as shown by the testimony and the said Master's report, the cost of drilling, equipping and operating the

wells in controversy exceeded largely the total amount of oil produced from the wells, so that under the finding by the Master and by Your Honor, the government is entitled to no money judgment, and, accordingly, petitioners show that the recommendation of the Master, approved by the opinion herein handed down by your Honor, is erroneous in holding that your petitioners by their receipt of royalties from the principal defendant, the Pure Oil Operating Company, are liable for any money judgment whatever to the plaintiff when said Company, by reason of the fact that the cost of producing the oil largely exceeds the value of the oil produced, is not liable.

Wherefore, petitioners pray for a rehearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

THIGPEN & HEROLD,  
Solicitors for Defendants.

#### ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,  
United States District Judge.

August 4, 1919.

Indorsed:—Petition for Rehearing. Aug. 13, 1919. Filed.



## Chancery Order Book.

United States District Court for the Western District of  
Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,  
vs. No. 1171, In Equity.  
Mrs. Lydia H. McMullen, et al.

In this cause the Motion for Re-hearing which was heretofore filed, came on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. L. Herold, after argument, and consideration by the Court,

It is ordered, that this Motion be overruled.

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104 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,  
vs. No. 1171, In Equity.  
Mrs. Lydia Hanszen McMullen, et al.

To the Honorable, the Judge of the District Court of the  
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States  
of America, plaintiff in the above numbered and entitled  
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,  
Special Assistant to the At-

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,  
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S AP-  
PEAL.

In the District Court of the United States for the West-  
ern District of Louisiana.

United States of America,  
vs. No. 1171, In Equity.  
Mrs. Lydia Hanszen McMullen, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Pure Oil Operating Company for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an  
offset or counterclaim, the cost of the production  
106 of said oil and in not entering a decree in favor  
of plaintiff for the full value of the oil extracted  
and removed from the land in controversy, because the  
said land had been withdrawn from any appropriation  
whatever by orders of the President of the United States,  
dated respectively December 15, 1908, and July 2, 1910,

which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said wells were drilled after the issuance of both of said withdrawal orders in violation thereof, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

### III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil.

### IV.

The Court further erred, in any event, in finding and holding that the said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the wells in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Appeal, Order Allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

108 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia H. McMullen, et al., Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, Sitting within and for the Shreveport Division:

All the defendants, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on December 4th, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors,

which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security be required of them to perfect said appeal be made.

THIGPEN & HEROLD,  
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Eight Thousand Dollars.

Jan. 10/20.

RUFUS E. FOSTER,  
United States District Judge.

Indorsed:—Motion and Order for Appeal. Filed Jan. 12, 1920.

B.

## SUPERSEDEAS BOND ON APPEAL.

109      In the District Court of the United States for

United States of America, Plaintiff,

vs.

No. 1171, In Equity.

Mrs. Lydia H. McMullen, et al., Defendants.

Know all men by these presents: That we, Lydia H. McMullen, J. A. McMullen, H. Earl Barnes, Sam W. W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Co.; Natalie Oil Co.; Gulf Refining Co. of La., Standard Oil Co. of La., as principal and the National Surety Co., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Eight Thousand Dollars, for which well and truly to be made, we hereby bind ourselves our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 5th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and Mrs. Lydia H. McMullen, et al., were defendants, numbered on the Equity docket 1171, a decree was rendered and signed against the said Mrs. Lydia H. McMullen, et al, and a rehearing thereof refused on Dec. 4th, 1919, and the said Mrs. Lydia H. McMullen, et al, having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit:

Now if the said Mrs. Lydia H. McMullen, et al, shall prosecute such appeal to effect and answer all damages and costs if they fail to make their pleas good, then the above  
 110                   tion to be void; otherwise to remain in full force  
                           and effect.

MRS. LYDIA H. McMULLEN,  
 By S. L. HEROLD, Atty.  
           J. A. McMULLEN,  
 By S. L. HEROLD, Atty.  
           H. EARL BARNES,  
 By S. L. HEROLD, Atty.  
           SAM W. MASON,  
 By S. L. HEROLD, Atty.  
           ROBT. L. STRINGFELLOW,  
 By S. L. HEROLD, Atty.  
           DILLARD P. EUBANK,  
 By S. L. HEROLD, Atty.  
           PURE OIL OPERATING CO.,  
 By S. L. HEROLD, Atty.  
           NATALIE OIL CO.,  
 By S. L. HEROLD, Atty.  
           GULF REFINING CO., OF  
                   LA.,  
 By S. L. HEROLD, Atty.  
           STANDARD OIL CO. OF LA.,  
 By J. C. PUGH, S. L. H., Atty.  
           NATIONAL SURETY CO.,  
 By MERIWETHER-MAYO IN-  
           SURANCE AGENCY,  
 By W. T. MAYO, Vice Pres.,  
                   Attys in fact.

Approved:

RUFUS E. FOSTER,  
           U. S. District Judge.

Indorsed: Supersedeas Bond. Filed Jan. 12, 1920.  
 B.



111 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1171, In Equity.  
Mrs. Lydia M. McMullen, et al., Defendants.

And now, on this the 10th day of January, 1920, come all of the defendants, by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of a rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendant; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 2nd, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

#### Fourth.

The Court erred in awarding judgment for plaintiff for the land.

#### Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

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#### Sixth.

That the Court erred in condemning defendants in solido.

#### Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

#### Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation the amounts paid as royalties.

#### Ninth.

The Court erred (even though it had been justified in awarding any judgment of any character against defend-

ants or either of them, which is denied) in awarding plaintiff judgment for amount of royalties paid by the Pure Oil Operating Company when the undisputed evidence shows that the cost of extracting the oil from the premises exceeds the total sales of all oil extracted and reduced to possession.

**Tenth.**

That the Court erred in condemning defendants Gulf Refining Co. of Louisiana and Standard Oil Co. of Louisiana for the value of the oil purchased by them respectively from their co-defendants.

**Eleventh.**

That the Court erred in holding the mere purchaser of oil produced and reduced to possession by the bona fide possessor of the land liable, by reason of such purchaser, to the plaintiff because adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

**J. C. PUGH,**  
**THIGPEN & HEROLD,**  
 Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.  
 B.

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## STIPULATION OF COUNSEL.

In the District Court of the United States for the  
Western District of Louisiana.

United States of America,

vs.

No. 1171.

Mrs. Lydia Hanszen McMullen, Et. Al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1168, and 1170, were consolidated in the District Court for trial with the case entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled *United States v. Sam W. Mason, et al.*, No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral  
114 location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Motion to dismiss by Gulf Refining Co. of Louisiana.
3. Answer of Mrs. Lydia H. McMullen, et al.
4. Answer of Standard Oil Company of Louisiana, and exhibits and bonds thereto annexed.

5. Plaintiff's reply to set off and counterclaim.
6. Amended answer of Mrs. Lydia H. McMullen, et al.
7. Plaintiff's reply to set off and counterclaim asserted by the Pure Oil Operating Co. in amended answer.
8. Motion to dismiss by Standard Oil Company of Louisiana.
9. Order of Court overruling motion to dismiss and sustaining motion to strike out certain interrogatories.
10. Order of Court overruling motion to dismiss and pleas of Gulf Refining Co. of Louisiana.
11. Interrogatories propounded by plaintiff to defendants.
12. Motion of Standard Oil Company of Louisiana to strike out certain interrogatories.
13. Answer of Pure Oil Operating Company to interrogatories.
14. Answers of Standard Oil Company of Louisiana to Interrogatories.
15. Answers of Gulf Refining Company of Louisiana to Interrogatories.
16. Order of Court appointing E. H. Randolph as Special Master in Chancery.
17. Pages 1 and 2 of statement of James W. Neal, Special Agent of the General Land Office, marked plaintiff's Exhibit L, showing quantity and value of oil roy-

alties paid, cost of drilling and operating the wells, together with all the other information given in said statement.

115      18. Exceptions of Standard Oil Company of Louisiana to Master's Report.

19. Exceptions of Gulf Refining Company of Louisiana to Master's report.

20. Exceptions of Pure Oil Operating Company to Master's report.

21. Exceptions of Mrs. Lydia H. McMullen, et al., to Master's report.

22. Plaintiff's exceptions to Master's report.

23. Final decree.

24. Defendants' petition for rehearing.

25. Order of Court overruling petition for rehearing.

26. Plaintiff's petition for appeal, order allowing same and assignment of errors.

27. Defendants' petition for appeal, order allowing same, appeal bond and assignment of errors.

28. This stipulation.

Thus done and signed, this 12th day of May, 1920.

ROBERT A. HUNTER,  
Attorney for Plaintiff.

J. C. PUGH,  
THIGPEN & HEROLD,  
Attorneys for Defendants.

Filed May 14, 1920.

## CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit do hereby certify that the foregoing one hundred and fifteen pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is Complainant, and Mrs. Lydia Hanszen McMullen, et al., are defendants, No. 1171, in Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

W. B. LEE, Clerk,  
United States District Court,  
Western District of Louisiana.

(Seal)

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Citations omitted from the printed record, being filed in the Original.

• • • • •



And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from Minutes February 24, 1921.

No. 3547.

LYDIA HANSZEN McMULLEN et als.  
versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

*Opinion of the Court.*

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,  
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees,  
Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

## No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

## No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States  
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

*Judgment.*

Extract from Minutes of May 17th, 1921.

No. 3547.

LYDIA HANSZEN McMULLEN et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

*Petition for Appeal and Order Allowing Same.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, Lydia Hanszen McMullen, J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided

by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

*Solicitors for said Appellants.*

*Order.*

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Seventy Thousand (\$70,000.00) Dollars.

June 7th, 1921.

(Signed)

R. W. WALKER,

*Judge U. S. Circuit Court of Appeals.*

*Assignment of Errors.*

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,  
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

*First.*

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

*Second.*

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

## Third.

The Court erred in holding defendants to be trespassers.

## Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

## Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

## Sixth.

The Court erred in holding that defendants did not act in good faith.

## Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

## Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

## Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

## Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

## Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

## Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

## Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Pure Oil Operating Company, the amount of oil delivered by it to its co-defendants as royalty.

## Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

## Fifteenth.

The Court erred in condemning defendants Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana for the value of the oil purchased by them, respectively, from their co-defendants.

## Sixteenth.

The Court erred in holding the mere purchaser of oil produced and reduced to possession by the actual possessor of the land to be liable to plaintiff by reason of such purchase because plaintiff may have been herein adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,  
S. L. HEROLD,  
*Solicitors for Defendants.*

*Appeal Bond.*

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

Mrs. LYDIA HANSZEN McMULLEN, J. A. McMULLEN, H. EARL BARNES, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, as principal-, and National Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of Seventy Thousand (\$70,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3547, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Com-



pany of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) MRS. LYDIA HANSZEN MACMULLEN,  
By S. L. HEROLD,  
*Atty.*

(Signed) J. A. MACMULLEN,  
By S. L. HEROLD,  
*Atty.*

(Signed) H. EARL BARNES,  
By S. L. HEROLD,  
*Atty.*

(Signed) DILLARD P. EUBANK,  
By S. L. HEROLD,  
*Atty.*

(Signed) PURE OIL OPERATING COMPANY,  
By S. L. HEROLD,  
*Atty.*

(Signed) GULF REFINING COMPANY OF  
LOUISIANA,  
By S. L. HEROLD,  
*Atty.*

(Signed) STANDARD OIL COMPANY OF  
LOUISIANA,  
By T. M. MILLING,  
*Atty.*

(Signed) NATIONAL SURETY COMPANY,  
By LOUIS COIRON,  
*Res. Vice-President.*

Countersigned by:  
[SEAL.] LOUIS VALE,  
*Res. Asst. Secty.*

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,  
*United States Circuit Judge.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 137 to 146 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3547, wherein Lydia Hanszen McMullen and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 136, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit Court of Appeals.*

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,  
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3547 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Lydia Hanszen MacMullen and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

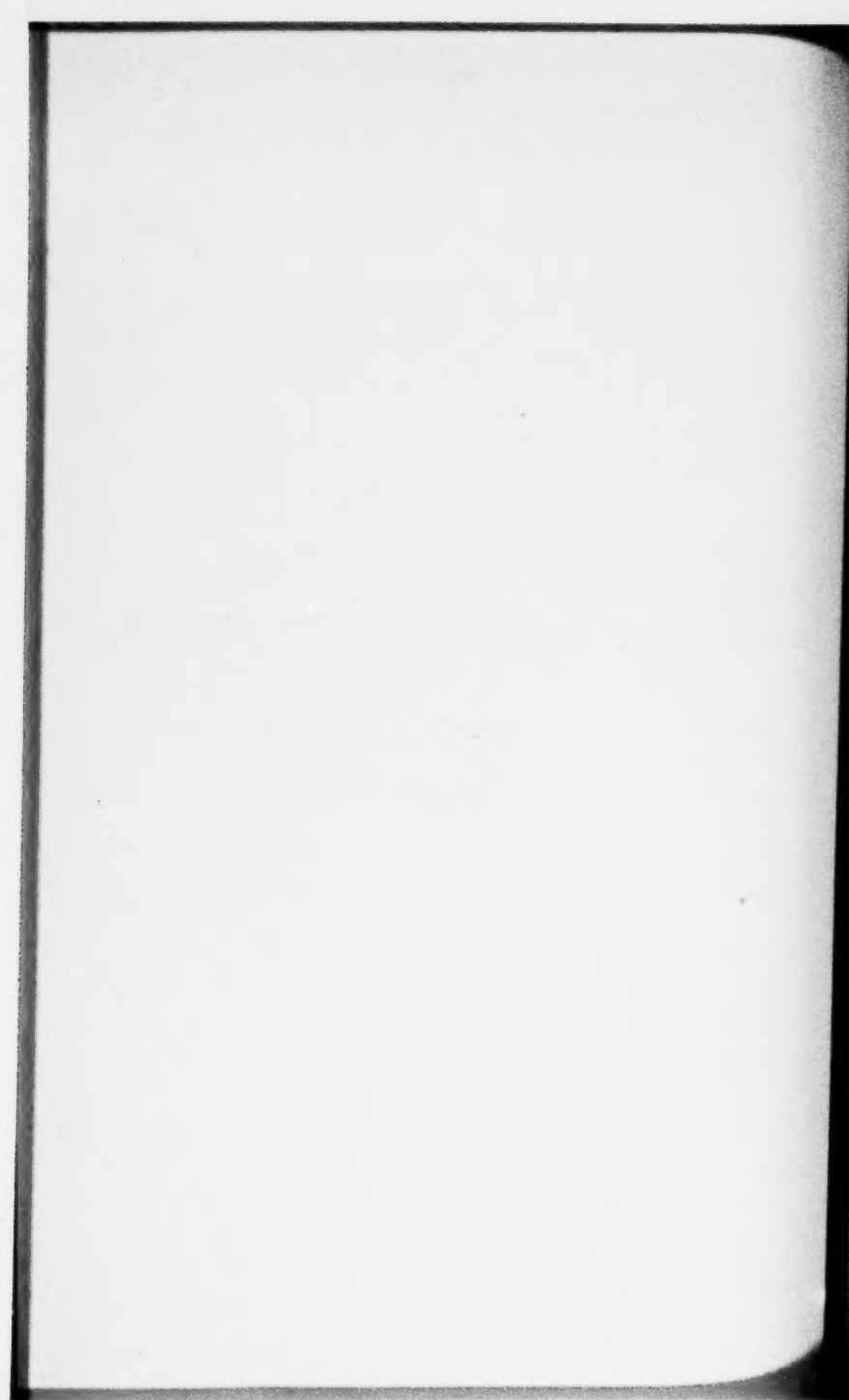
R. W. WALKER,  
*United States Circuit Judge.*

[Endorsed:] No. 3547. United States Circuit Court of Appeals, Fifth Circuit. Lydia Hanszen MacMullen et al., Appellants and Cross-Appellees, vs. The United States of America, Appellees and Cross-Appellants. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

Endorsed on cover: File No. 28,353. U. S. Circuit Court Appeals, 5th Circuit. Term No. 398. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,353.



TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

SCOTLAND TERM, 1922

No. 117

NAM W. MASTIN, LYDIA HANSEN MACMULLEN, EUGENE  
HANSEN, ET AL., APPELLANTS,

THE UNITED STATES OF AMERICA,

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

---

FILED JULY 2, 1922.

(28,354)

(28,354)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 399.

SAM W. MASON, LYDIA HANSZEN MacMULLEN, EUGENE  
HANSZEN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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## UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex C. King, Circuit Judges.

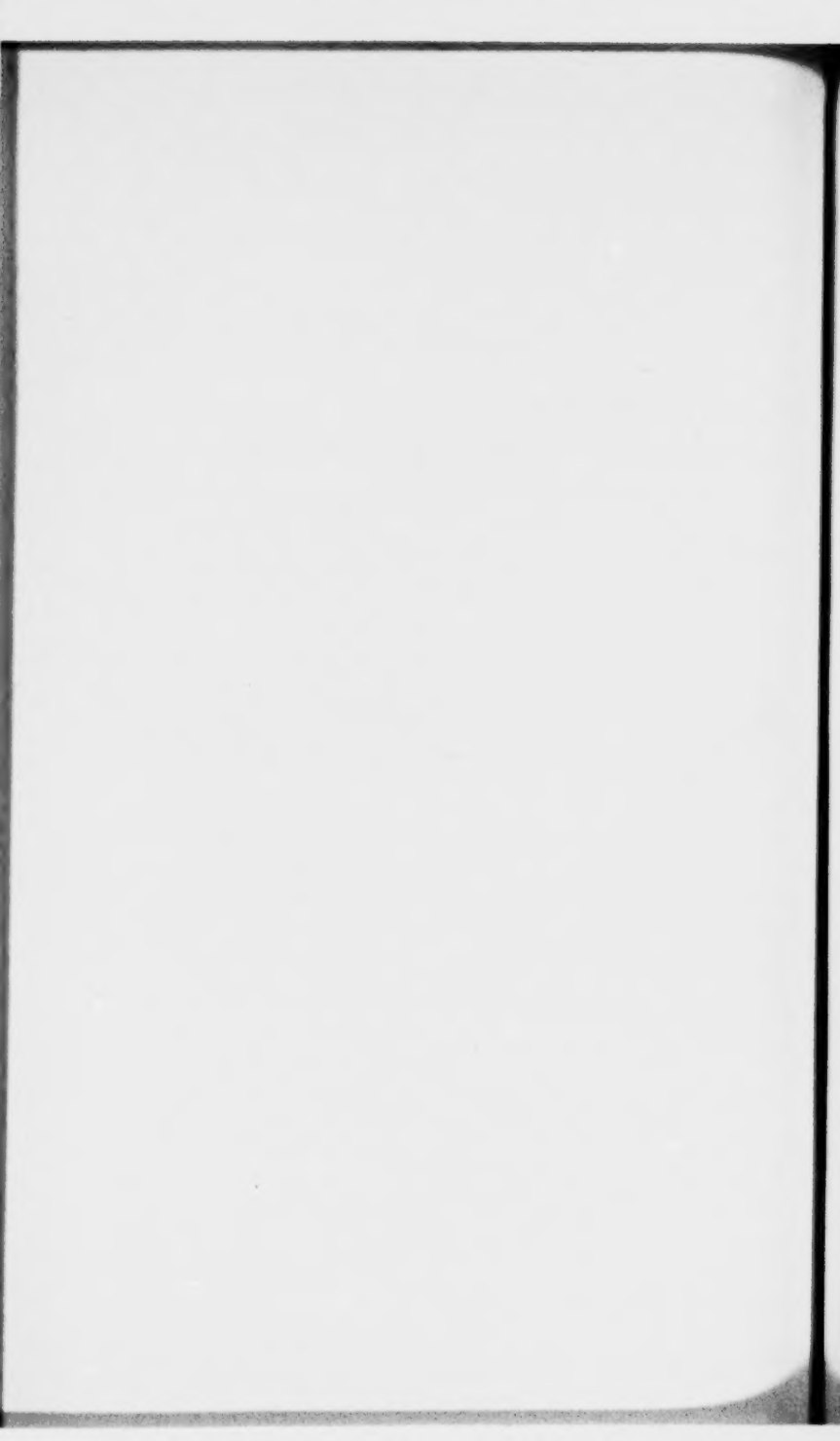
SAM W. MASON, LYDIA HANSZEN McMULLEN, J. A. McMULLEN, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3548, as follows:





UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus          No. 1172, In Equity.

SAM W. MASON, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendant, and Cross Appeal taken by the  
Plaintiff to the United States Circuit Court of Ap-  
peals, Fifth Circuit, New Orleans, Louisiana.

1        IN THE DISTRICT COURT OF THE UNITED  
          STATES FOR THE WESTERN DISTRICT  
          OF LOUISIANA, SHREVEPORT DIVI-  
          SION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 1172, In Equity.

SAM W. MASON, MRS. LYDIA HANSZEN McMUL-  
 LEN, J. A. McMULLEN, EUGENE HANSZEN, ROB-  
 ERT L. STRINGFELLOW, DILLARD P. EUBANK,  
 J. B. STOCKLEY, C. F. GRIGGS, ELIZABETH MA-  
 SON, MARGARET MASON, JOHN B. MASON, W.  
 C. MASON, A. A. MASON, A. D. MASON, GULF RE-  
 FINING COMPANY OF LOUISIANA,

Defendants.

To the Honorable Judge of the District Court of the  
 United States for the Western District of Louisiana,  
 Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert  
 A. Hunter, Special Assistant to the Attorney General,  
 acting herein under the direction and by the authority  
 of the Attorney General of the United States, brings this  
 bill of complaint against the following defendants:

Sam W. Mason, a citizen of Louisiana, and a resident  
 of the City of Shreveport, in the Western District of said  
 State, Shreveport Division;

Mrs. Lydia Hanszen McMullen, a citizen of the State  
 of Nevada, and a resident of the town of Carson City,  
 said State;

J. A. McMullen, husband of said Lydia Hanszen Mc-  
 Mullen, a non-resident of the State of Louisiana, whose  
 residence is unknown to plaintiff;

Eugene Hanszen, a citizen of Texas and a resident of the City of Dallas, in the Northern District of said State;

Robert L. Stringfellow, a citizen of Louisiana, and a resident of the City of Shreveport in the Western District of said State, Shreveport Division;

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

J. B. Stockley, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

2 C. F. Griggs, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

Elizabeth Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of State, Shreveport Division;

Margaret Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division.

John B. Mason, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

W. C. Mason, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

A. A. Mason, a citizen of Texas, and a resident of Petrolia, in the Northern District of said State;

A. D. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division; and

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State;

and thereupon complains and shows unto your Honor:

### I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which had theretofore been surveyed and was known as the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section Five (5), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other mineral therein contained.

### II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25,

1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

### III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well, known as Mason Mineral No. 1, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

## IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to  
4        withdraw said land from location, entry and other appropriation.

## V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, was extracted under the color of an illegal mineral location made by Sam W. Mason, defendant, and by W. W. Mason (since deceased) pretending to act under the placer mining laws of the United States, which pretended mineral location was recorded March 26, 1910, in Book 59, page 234, of the Conveyance Records of Caddo Parish, Louisiana. That said pretended mineral location embraced Twenty (20) acres in the said  $8\frac{1}{2}$  of the  $E\frac{1}{4}$  of said Section Five (5), in Township Twenty (20) North, Range Sixteen (16) West, and is in words and figures as follows:

### Notice of Mining Location.

Sam W. Mason and W. W. Mason

to

The Public.

To all whom it may concern:

Notice is hereby given that the undersigned, all citizens of the United States, having complied with the requirements of Chapter VI, Title 32 of the Revised Statutes of the United States and the local laws, rules and regulations, and under the authority of the Act of Congress of February 11, 1897, relating to the location of lands containing petroleum oil and other mineral oils under placer mining claims; the undersigned, constituting a mining association have located 20 m acres of land described as follows, lying in Caddo Parish, State of Louisiana, to-wit:

Beginning at a point 660 feet east of the south west corner of the North  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 5, Township 20, Range 16, thence east 1320 feet, thence south 660 feet, thence west 1320 feet, thence north 660 feet to the place of beginning containing 20 acres.

Witness our hands this the 26th day of March, A. D. 1910.

(Signed)

SAM W. MASON,  
W. W. MASON.

Attest:

C. F. GRIGGS,  
W. E. MARTIN.



Indorsed:—Filed and Recorded Mch. 26, 1910. F. A. Leonard, Clk & Ex Off Recorder. Recorded Con Book 59, page 234.

That the said Sam W. Mason and W. W. Mason themselves made no effort to explore said land or drill  
 5 thereon for oil and gas, but on March 28, 1910, by act recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana, executed a mineral lease thereof to defendant, Gulf Refining Company of Louisiana.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended and illegal mineral location and lease and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and defendant, Gulf Refining Company of Louisiana, drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it has appropriated to its own use.

That the said Gulf Refining Company of Louisiana, paid to the said Sam W. Mason, and to W. W. Mason and his heirs, to-wit: Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, and A. D. Mason, and to the other defendants herein named, who claimed an interest in such mineral location, certain sums as royalties, the amount of which is to be plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from said land, appropriated as aforesaid, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought.

## VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

## VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Fifty-seven Thousand (\$57,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

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## VIII.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location made on March 26th, 1910, by Sam W. Mason and W. W. Mason, as per act recorded in Conveyance Book 59, page 234, and the lease made by the said Sam W. Mason and W. W. Mason to the Gulf Refining Company of Louisiana, on March 28, 1910, by act recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of Subpoena issue directed to Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason and A. D. Mason, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: Mrs. Lydia Hanszen McMullen, Eugene Hanszen, A. A. Mason, and the Gulf Refining Company of Louisiana, and served as provided by law, directing said defendants to appear and answer to this cause on a day certain to be designated by this Court.

And may it further please the Court that an order be granted and entered directed to J. A. McMullen, defendant, directing said defendant to appear and answer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

Prays for all further orders necessary and such other and general relief as may by the Court be deemed just and equitable.

ROBERT A. HUNTER,

8

Special Assistant to the Attorney General.

5

#### AFFIDAVIT.

United States of America,  
Northern District of California,

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location, and all forms of appropriation by order of December 15, 1908, and July 2, 1910, and that from the examination of such lands, and from examination of the records of the General Land Office and of the local land office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of com-

plaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

(Seal)

C. W. CALHEATT,  
Deputy Clerk United States District Court, Northern District of California.

9

# ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, Eugene Hanszen, A. A. Mason, and the Gulf Refining Company of Louisiana, are not inhabitants of the Western District of Louisiana and are domiciled outside of said District,

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport in the Western District of Louisiana, on the 1st day of October, 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this Order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for a period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that

copies of this Order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 8 day of Aug., 1917.

GEO. WHITFIELD JACK,  
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.

B.

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10 In the District Court of the United States for the  
Western District of Louisiana, Shreveport  
Division.

United States of America, Plaintiff,

vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

The joint and several answer of all the defendants in the above entitled and numbered cause.

And now comes all of said defendants and answer the bill of complaint as follows:

I.

The ownership by the United States, on and before December 15th, 1908, of the South Half of the Northeast Quarter of Section Five (5), township and range referred

to, is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

## II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of the United States or that such order pretended to operate said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said

tract under the mining laws, and defendants show  
11 that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

## III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for



oil and gas and did drill the well referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said well was drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority or in bad faith or to the injury of plaintiff.

#### IV.

The averments of Article Four of the Bill of Complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

#### V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Sam W. Mason and W. W. Mason; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Defendants admit the execution of lease by said locators to the Gulf Refining Company of Louisiana, as recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana; and show

that under said lease, lawfully made and entered into, said lessee proceeded in good faith and according to the terms of its said contract to drill upon said location, commencing such drilling on the 16th day of April, 1910, and completing such effort with the discovery of oil in paying quantities by the bringing in on the 6th day of June, 1910, of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through said well, drilled as aforesaid under said mineral location, a large quantity of oil which, after delivery to the mineral locators of their proportion as royalty as provided in said lease, the Gulf Refining Company of Louisiana has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

#### VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

#### VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

#### VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, prior

to which date (to-wit, on June 6th, 1910) said locators, Sam W. Mason and W. W. Mason, through their lessee, Gulf Refining Company of Louisiana, had made a discovery on said tract, of oil in paying quantities, under the location made by them on March 26th, 1910; all of which defendants allege to be true, and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

13

## IX.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locators, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, ninety-two thousand five hundred and eighty-three & 27/100 (92583.27) barrels of oil of the market value of Sixty-four Thousand Nine Hundred and Seven & 77/100 (\$64,907.77) Dollars; of which, thirteen thousand and eighty-five & 22/100 (13085.22) barrels of oil of the market value of Eight Thousand and Sixty & 8/100 (\$8060.08) Dollars was delivered to said locators under the stipulations of said lease, and two thousand three hundred and forty-four & 99/100 (2344.99) barrels of oil of the market value of Two Thousand Seven Hundred and Sixty-three & 23/100 (\$2,763.23) Dollars is being held for account of said locators pending termination of litigation, and the remainder, to-wit, seventy-seven thousand one hundred and fifty-three & 6/100 (77153.06) barrels of oil of the market value of Fifty-four Thousand and Eighty-four & 46/100 (\$54,084.46) Dollars, retained by said lessee for its own use as owner—all of which it had the right to do.

## X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of Sam W. Mason and W. W. Mason was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the well above referred to.

14 And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

## XL

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said well was drilled in good faith and under such belief of right. And defendant, Gulf Refining Company of Louisiana, shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said well before it can be held liable, if any such liability there be, for any oil extracted therefrom. And defendants show that the actual cost of drilling and equipping of said well was Ten Thousand One Hundred and Nineteen & 86/100 Dollars (\$10,119.86) and that the cost to defendant of the operation of said well to the 31st day of July, 1917, was Twenty-three Thousand and Seventeen & 79/100 (\$23,017.79) Dollars, making a total expense to this defendant in the drilling, equipping and operation of said well of Thirty-three Thousand One Hundred and Thirty-seven & 65/100 (\$33,137.65) Dollars.

Wherefore, having made full and complete answer to all the allegation of the aforesaid bill of complaint, defendants pray that the said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Gulf Refining Company of Louisiana

may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said well and of the operation thereof up to date of

15 final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Gulf Refining Company of Louisiana and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,  
THIGPEN & HEROLD,

Solicitors for Defendants.

Indorsed:—Answer. Filed Sep. 29, 1917.

16 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

# I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled

cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

## II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

## III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

## IV.

Plaintiff shows that the said defendants are not entitled to any set off or counterclaim, whatsoever in the premises.

## V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill  
17 of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

## VI.

Plaintiff further shows, in the alternative, that even if the said defendants are entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

## VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.

B.

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18 (INTERROGATORIES PROPOUNDED BY  
PLAINTIFF TO THE GULF REFINING  
COMPANY OF LOUISIANA).

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Mason Mineral No. 1. State when said well was commenced and when completed.

(2).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy, was 92,583.27 barrels, of the value of \$64,907.77. State whether or not the production of said well as given in your said answer is exact, or estimative.



(3).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917 to January 1, 1918.

19

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(7).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the well in suit.

(8).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(9).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

20

(10).

What are the principal products manufactured from petroleum or crude oil?

(11).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(12).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b)

the profits made by it from the manufacture and sale of the products of said crude oil.

(13).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(14).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

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(15).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other defendants herein, out of the proceeds of the sale of oil taken from the land in controversy, and state the amount of such

royalties which the said Gulf Refining Company of Louisiana is now holding, pending the result of this suit, and the names of the persons for whose account said royalties are held.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed: Interrogatories to be Answered by the Gulf Refining Company of Louisiana. Filed Feb. 14, 1918.

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22 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Complainant,  
vs. No. 1172, In Equity.  
Sam W. Mason, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Mason Mineral No. 1 was commenced on April 16th, 1910. The well was completed in the last week of May, 1910, and was completely equipped on June 6th, 1910.

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to July 31st, 1917, are exact.

To Interrogatory No. 3, defendant answers:

(a) The total production from the said well to July 31st, 1917, was 92,583.27 barrels, of the value of \$64,907.77. (b) The production from July 31st, 1917, to January 1st, 1918, was 1,421.16 barrels, of the value of \$2,825.17.

To Interrogatory No. 4, defendant answers:

The well was operated by itself.

To Interrogatory No. 5, defendant answers:

Yes, a record was kept of daily production of the oil from said well.

To Interrogatory No. 6, defendant answers:

The production as given above is exact.

To Interrogatory No. 7, defendant answers:

L. E. Delcuse, Auditor of the Gulf Refining Company of Louisiana, Gulf Pipe Line Company Building, Houston, Texas.

To Interrogatory No. 8, defendant answers:

The production from said land up to January 1st, 1918, was 94,004.43 barrels, of the value of \$67,732.94. The value given is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 9, defendant answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil. The crude oil produced by it from the land in controversy was sold to the Gulf Pipe Line Company.

To Interrogatory No. 10, defendant answers:  
Gasoline, kerosene and lubricating oils.

To Interrogatory No. 11, defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 12, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profits from the sale of any or all of the crude oil extracted from the land in controversy, outside of the profit made by it in its drilling operations—the value of the oil at the mouth of the well, less the cost of drilling, equipment and operation.

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 13, defendant answers:

The crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Refining Company of Louisiana to the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter company in the State of Texas.

24 To Interrogatory No. 14, defendant answers:

(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company:

(b) From this sale the Gulf Refining Company of Louisiana made no profit beyond its profit from pipe line operations, having charged the Gulf Pipe Line Company, in addition to the value of the oil in the field,

Pipage on 20,649.94 bbls. at 5c. per bbl. or	\$1,032.47
Pipage on 73,354.99 bbls. at 10c. per bbl. or	7,335.50
Total pipage charge of .....	<u>8,367.97</u>

This pipage charge represents little, if any, profit, but is the cost of the operation of the line plus a reasonable depreciation and depletion charge to take care of the operation and obsolescence of the pipe line.

(c) Delivery, as aforesaid, was made to the purchaser at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors, or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same. Of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 15, defendant answers:

There were delivered by the Gulf Refining Company of Louisiana, as royalty, to the other defendants herein, 13,085.22 barrels of oil, out of the production from the property in controversy, which oil it purchased from the said

defendants, for \$8,060.08, at the prevailing market price in the field at the date of such purchase.

25 The Gulf Refining Company of Louisiana is now holding, pending the result of this suit, \$3,234.12, which stands on its books, subject to the credit of its co-defendants as representing the purchase price of 2,581.86 barrels of oil, delivered to the said co-defendants as royalty, and purchased by it at the prevailing prices in the field.

The number of barrels of oil delivered to each of its said co-defendants and the purchase price thereof is as follows:

#### Paid For.

	Bbls.	Value.
R. L. Stringfellow and J. B. Stockley	396.63	158.65
Mrs. Lydia H. McMullen .....	6,718.32	3,304.03
E. Hanszen .....	619.11	548.17
D. P. Eubank .....	1,238.26	1,096.51
Sam W. Mason .....	1,238.26	1,096.51
R. L. Stringfellow .....	1,916.45	1,237.48
J. B. Stockley .....	958.19	618.73
	<hr/> 13,085.22	<hr/> 8,060.08

#### Held up on Account Litigation.

Mrs. Lydia H. McMullen, Trustee ..	322.75	404.27
E. Hanszen .....	322.75	404.27
D. P. Eubank .....	645.45	808.49
Sam W. Mason .....	645.45	808.49
R. L. Stringfellow .....	430.30	539.06
J. B. Stockley .....	215.16	269.54
	<hr/> 2,581.86	<hr/> 3,234.12

C. R. MINOR.



Sworn to and subscribed before me, on this the 15th day of March, 1918.

(Seal) J. A. THIGPEN,  
Notary Public in and for  
Caddo Parish, Louisiana.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.  
B.

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26 United States District Court, Western District  
of Louisiana.

United States of America,

vs. No. 1172, In Equity.

Sam W. Mason, et als.

Note of the Evidence offered and filed by plaintiff and defendant, at the hearing of Special Pleas set forth in Answer of defendants in above cause, in said Court, at Shreveport, Louisiana, on February 28, 1918, before his Honor, Judge Rufus E. Foster.

Appearances:

Robert A. Hunter, Esq., Special Assistant to the Atty. General, Solicitor for Complainant.

Thigpen & Herold, Solicitors for Defendants.

Counsel for defendants offers and files in evidence transcript of the testimony of Sam W. Mason on the trial of Special Pleas set forth in Answer of Defendants.

## Offerings by Complainant.

By Mr. Hunter:

1. I wish to offer in evidence Withdrawal Order of December 15, 1908, and July 2, 1910, marked "Plaintiff's Exhibits A and B," respectively.

2. I wish to offer in evidence copy of telegram (Certified copy of telegram) from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, La., dated December 18, 1908.

By Mr. Herold:

Objected to on the ground that it is beyond the province of the Commissioner of the Land Office to change or alter the terms of the withdrawal Order.

Objection is overruled.

Document filed in evidence and marked "Plaintiff's C."

By Mr. Hunter:

I offer in evidence certified copy of letter, dated December 15, 1908, from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed and marked Plaintiff's "D."

4. I wish to offer in evidence certified copy of letter dated July 16, 1910, from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed and marked "Plaintiff's Exhibit E."

5. Plaintiff offers in evidence certified copies of letters marked "Plaintiff's F," 1, 2, 3, 4 and 5. Documents filed in evidence.

6. Plaintiff offers in evidence copies of letters and documents marked Plaintiff's "G, H, I, J and K". Documents filed in evidence as marked.

7. Plaintiff offers in evidence certified copy of Plat showing petroleum withdrawals, marked Plaintiff's "L". Filed.

8. Plaintiff offers in evidence certified copy of Decision of the Department of the Interior, in the matter of the Homestead Entry of John T. Bowman, document filed and marked "Plaintiff's M."

9. Plaintiff also offers in evidence Decision of the Commissioner of the General Land Office in the matter of the Homestead Entry of John Bowman, marked Plaintiff's "N."

10. Plaintiff also offers certified copies of Decisions of the Commissioner of the General Land Office and of the Secretary of the Interior, in the matter of the Homestead Entry of William J. Alborty. Document filed in evidence and marked Plaintiff's "O and Plaintiff's P."

11. Plaintiff also offers in evidence Map showing petroleum withdrawals outstanding on September 30, 1916, in the State of Louisiana. Document filed in evidence and marked "Plaintiff's Q."

12. Plaintiff also offers in evidence extract copy of the Tract books of the General Land Office, so far as it shows Section 5, Township 20, North, Range 16 West. Document filed in evidence and marked "Plaintiff's R."

13. Counsel for plaintiff also offers in evidence copy of letter of December 15, 1908, from the Commissioner

of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed in evidence and marked "Plaintiff's S."

14. Plaintiff also offers in evidence Telegram from the Commissioner of the General Land Office to the Register and Receiver, at Natchitoches, Louisiana. Document filed and marked "Plaintiff's T."

Evidence Closed.

I hereby certify that the above and foregoing is a full, true and correct note of the evidence offered at the hearing of above cause on Special Pleas of Defendants, at Shreveport, La., before Honorable Rufus E. Foster, U. S. Judge, on February 28, 1918.

Shreveport, La., Feb. 28, 1918.

.....,  
Stenographer.

TESTIMONY OF SAM W. MASON ON TRIAL OF  
SPECIAL PLEAS SET FORTH IN ANSWER OF  
DEFENDANTS.

28 In the District Court of the United States, for  
the Western District of Louisiana.

United States of America, Complainant,

vs.

Sam W. Mason, et al., Defendants.

Appearances:

For Defendants, Thigpen & Herold.

For Plaintiff, Robert A. Hunter, Special Assistant to  
the Attorney General.

Testimony taken on behalf of Defendants.

SAM W. MASON, called as a witness for Defendants,  
being first duly sworn, testified as follows, on direct ex-  
amination by Mr. Herold:

Q. Mr. Mason, you are one of the defendants in this  
case?

A. Yes, sir.

Q. You are the Sam W. Mason, who was one of the  
Mineral locators on the property in controversy, on March  
26, 1910?

A. Yes, sir.

Q. Was any discovery of oil in paying quantities made  
under that location?

A. There was.

Q. When was work begun on the location in the effort  
to find oil?

A. Drilling operations started according to my recollection, on April 16, 1910. The derrick was probably erected a few days earlier.

Q. Was this well completed?

A. It was.

Q. On what date?

A. May 29, 1910.

Q. What was the result of this well, that is to say, did it produce oil, and, if so, in approximately what quantities?

A. This well produced oil in paying quantities, and during the first month it averaged approximately 290 to 300 barrels a day.

Q. Is the well still producing?

A. It is.

29

Cross Examination.

By Mr. Hunter:

Q. How many wells were drilled on the claim?

A. Only one, known as Mason Mineral No. 1.

Q. Do you know of your own knowledge when this well was commenced?

A. I do. I was up on the claim about ten days after the location was made, and at that time the material was being put on the ground for the beginning of operations for the drilling of the well. I kept in close touch with the drilling operations during the months of April and May, and have a record in my office showing that the oil sand was reached on May 29, 1910.

Q. Did you visit the tract and see the derrick after it was built, or witness any of the drilling operations?

A. I was on the tract while they were rigging up to drill, that is, after the derrick was completed, and while the machinery was being placed. I was not on the tract again until a few days after the completion of the well.

Q. When did you say the well was completed?

A. The well was completed, according to my records, on May 29, 1910, that is to say that the oil sand was reached and the actual process of drilling completed.

Q. When was oil from this well run into the pipe line?

A. There was a small amount of oil run during the month of May, 1910. The reason I know this, is because we paid the royalty on a small amount of oil, for oil run during the month of May.

Q. In testifying relative to the time of beginning and completion of this well, are you testifying of your own personal knowledge, or from records in your office, or in the possession of the Gulf Refining Company?

A. On the matter of the dates of location of the claim, and as to the date of the completion of the well and as to the payment of royalty, I am testifying from personal records kept by me with reference to the matters. As to the amount of oil produced, I am testifying from the records in the possession of the Gulf Refining Company of Louisiana.

30

Q. This location was not made until March 26, 1910?

A. That is the date.

Q. Was any work whatever of any kind, nature, or description done on this claim, prior to March 26, 1910?

A. There was not.

Indorsed:—Testimony of Sam W. Mason on Trial of Special Pleas Set Forth in Answer of Defendants. Filed Feb. 28, 1918.

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## Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Thursday, Shreveport, La., February 28, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1172, In Equity.

Sam W. Mason, et als.

This cause came on this day to be heard, according to previous assignment, upon the Special Pleas set up in defendants Answer herein—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the Complainant, and Mr. S. L. Herold appearing as Solicitor for defendants. The trial of the case was regularly proceeded with, documentary evidence was offered and filed by both complainant and defendant and the matter was argued and submitted.



Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon Rufus E. Foster, U. S. Judge.

United States of America,

vs.

No. 1172, In Equity.

Sam W. Mason, et als.

In this cause, in which the Pleas filed by defendants had heretofore been argued, and submitted, counsel for either side being now present in open Court, decision is orally rendered by the Court, overruling said Pleas, with the right reserved to defendants to renew said pleas upon the trial of the cause upon its merits.

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32 United States District Court, Western District of Louisiana.

United States,

vs.

No. 1172, In Equity.

Sam W. Mason, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court

and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court, or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

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33 United States District Court, Western District  
of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1154

W. W. Green, et al.

United States District Court, Western District of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1156

Henry Hunsicker, et al.

United States District Court, Western District of Louisiana,  
at Shreveport, Louisiana.

United States,  
vs. No. 1159  
Arkansas Natural Gas Co., et al.

United States District Court, Western District of Louisiana,  
at Shreveport, Louisiana.

United States,  
vs. No. 1168  
W. H. Matthews, et al.

United States District Court, Western District of Louisiana,  
at Shreveport, Louisiana.

United States,  
vs. No. 1170  
D. P. Eubanks, et al.

United States District Court, Western District of Louisiana,  
at Shreveport, Louisiana.

United States,  
vs. No. 1171  
Mrs. Lydia Hanszen McMullen, et al.

United States District Court, Western District of Louisiana,  
at Shreveport, Louisiana.

United States,  
vs. No. 1172  
Sam W. Mason, et al.

Evidence taken before the Honorable E. H. Randolph,  
Special Master, in the above causes, same being consoli-

dated, commencing of June 10th, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

34      Appearances:

R A. Hunter, for the Plaintiff.

Thigpen & Herold, J. Hampton Story and J. C. Pugh & Son, for defendants.

It is agreed that all of the documentary evidence offered by Plaintiff and Defendants in the case of the United States vs. Sam W. Mason, et al., No. 1172 on the docket of this Court shall be considered as a part of the record in each of these consolidated case and it shall not be necessary for any of the parties herein to reoffer such testimony.

Counsel for Plaintiff makes the following offerings in the cases of the United States vs. W. W. Green, No. 1154; United States vs. W. H. Matthews, et al., No. 1168; United States vs. Mrs. Lydia Hanszen McMullen, et al., No. 1171. Extract copies of the Louisiana tract book, showing as far as it shows, sections three and four of Township Twenty North, Range Sixteen West, Louisiana meridian.

Filed and marked Plaintiff "A."

Extract from the Louisiana tract book showing, as far as it shows, section Ten, Township Twenty North of Range Sixteen West, Louisiana meridian.

Filed and marked exhibit "B."

Extract of the Louisiana tract book, showing as far as it does Sections Three and Four, Township Twenty North, Range Sixteen West, Louisiana meridian.

Filed in Evidence and marked exhibit "C."

Extract, or certified copy of letter dated September 27th, 1913, from the Commissioner of the General Land Office, to Mr. Arthur D. Kidder, Supervisor of surveys.

Filed and marked exhibit "D."

35            Certified copy of letter dated December 1st, 1916, from the Commissioner of the General Land Office to Mr. Arthur D. Kidder, Supervisor of surveys.

Filed and marked Plaintiff "E."

Counsel for Plaintiff offers in Evidence certified copy of plat of survey made by Arthur D. Kidder, Supervisor of Surveys, approved by the Commissioner of the General Land Office March 28th, 1917, showing Township Twenty, North of Range Sixteen West, Louisiana meridian.

Filed in evidence and marked exhibit "F."

With reference to the case of the United States vs. Mrs. Lydia Hanszen McMullen, et al., Counsel for Plaintiff, in addition to the evidence offered, offers a copy of Transcript of Appeal in the case of the Producers Oil Company vs. Mrs. Lydia Hanszen McMullen, et al., previously introduced in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, it being agreed said transcript may be used as far as applicable in this case.

In each of the consolidated cases now on trial, Counsel for Plaintiff offers in evidence the interrogatories pro-

pounded to the various defendants herein, and the answers of said defendants to said interrogatories. Said interrogatories and answers thereto being now on file.

JAMES W. NEAL, a witness for the Plaintiff being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, are you a special Agent of the General Land Office?

A. I am.

Q. State whether or not you made an investigation in the case of the United States vs. W. W. Green, et al., No. 1154, relative to the quantity and value of the oil taken from the land in controversy in that case?

A. I made the investigation.

Q. How was the investigation made?

35 A. The investigation was made by checking the books of the Company as to the amount of oil and value of the oil and division of the oil and values, as between the royalty claimants and the producing Companies.

Q. What records did you use in making that investigation?

A. I used the books of the Company, the records of the Company and the run tickets and the list price of oil on the dates that the runs were taken.

Q. What Companies records did you examine?

A. I examined the records of the Standard Oil Company of Louisiana.

Q. Did you make an examination later of the records of the Pure Oil Operating Company, in that case?

A. Yes, sir.

Q. What did you find from your examination with respect to the quantity of oil taken from this land?

A. I found that from May, 1912, to August, 1914, inclusive, there was run from the land 12,584.22 barrels of oil of the value of \$11,042.51.

Q. What is the name of the well from which that oil was taken?

A. Green No. 1.

Q. From your investigation, do you know who drilled that well?

A. Yes, sir, the Humphrey Oil and Gas Company drilled the well.

Q. Were you advised as to whether or not the Humphrey Oil and Gas Company was still in existence, as a corporation?

A. I am not.

Q. Do you know from your investigation, how much oil was taken from the land by the Humphrey Oil and Gas Company?

A. I have the division of the oil as made by the Standard Oil Company of Louisiana, which Company ran all of the oil from the well in this suit. Their records showed that the Humphrey Oil and Gas Company received 6,551.11 barrels of the value of \$5,199.58; that the Franklin Oil and Fuel Company received 786.40 barrels of oil of the value of \$690.03; The Pure Oil Operating Company received 2,979.05 barrels of oil of the value of \$2,986.95; H. L. Heilperin received 740.57 barrels of oil of the value of \$737.90; E. G. Palmer received 740.61 barrels of oil of the value of \$737.95; that W. W. Green received 786.48 barrels of oil of the value of \$690.10.

36 Q. Do your records show how much oil the Pure Oil Operating Company received out of the production?

A. Yes, sir.

Q. Have you read that out?

A. Yes, sir.

Q. What do your records show with reference to whom the total production was sold?

A. Sold to the Standard Oil Company of Louisiana.

Q. When was the well in controversy in case No. 1154 drilled?

A. The records show that Green No. 1, was begun February 24th, 1912.

Q. Mr. Neal, have you in your hand a statement showing the production and value of the oil involved in this suit?

A. I have.

Q. I mark this statement Plaintiff "G" and will ask you to state whether or not this statement, insofar as it relates to the quantity and value of the oil taken from the land is correct.

A. It is correct.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, this well Green No. 1 was drilled by the Humphrey Oil and Gas Company?

A. Yes, sir.

Q. Do you know how the Franklin Oil and Fuel Company became interested in the well?

A. No, sir, I do not. The records only show that they drew part of the oil and were paid for that oil by the Standard Oil Company of Louisiana.

Q. Do you know from your investigation when the other defendants that is the Pure Oil Operating Company, Heilperin, Palmer became interested in the subject matter of this suit.



A. I never took any note of those dates, as to the time they became interested.

Q. You have investigated sufficiently to know that neither the Pure Oil Operating Company or H. L. Heilperin or E. G. Palmer had anything to do with the original drilling of the well, but acquired an interest subsequently?

A. That is my impression, but I am not positive about that.

Q. Have you made an investigation as to the expenditure made by the Pure Oil Operating Company, and Heilperin and Palmer in operating the well?

A. I made an investigation of the cost of operating the well from January, 1913, to August, 1914, inclusive, by the Pure Oil Operating Company.

Q. Are you satisfied with the result of that investigation, as to its correctness?

A. Yes, sir.

Q. What was the cost of operating?

A. The cost was \$3,997.03.

Q. That was the cost of operating the Green Well No. 1 by the Pure Oil Operating Company?

A. Yes, sir.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "G" and identified by the witness, insofar as said statement relates to the production, value and division of the oil taken from the well in controversy, but not with reference to the counterclaim shown thereon.

Filed in Evidence and marked Plaintiff "G."

Counsel for Defendants, in connection with the cross examination of this witness offers the statement "G" insofar as it relates to the counterclaim.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, referring to the case of the United States vs. Henry Hunsicker, No. 1156, being one of the consolidated cases now on trial I will ask you to state whether or not you made an examination of the records of the Producers Oil Company with respect to the quantity and value of oil taken from the land in controversy in that case, if so, state the result of your investigation?

A. I made an investigation and found that the total oil produced by Well No. 2, Hunsicker Well No. 2, was 76,565.87 barrels of the value of \$55,776.89; the royalty as approximated from the oil run from the well to Henry Hunsicker and C. J. Green, Jr., which has been paid in part and held in part by the Texas Company is \$9,294.46. The approximated amount retained by the Producers Oil Company, as their interest in the well, is of the value of \$46,482.41.

Q. Have you a statement showing the production and value of the oil involved in this suit?

A. Yes, sir.

Q. I hand you statement marked Plaintiff "H" and I will ask you to state whether or not you made this statement showing the production and value of the oil taken from the land in suit, and if that statement is correct?

A. The statement shows the production and value of the oil as I found it from the records of the Producers Oil Company.

Counsel for Plaintiff offers in Evidence the statement identified by the witness, insofar as it relates to the production and value of the oil taken from the land in suit, but not with reference to the counterclaim shown thereon.

Filed in Evidence and marked exhibit "H."

On Cross Examination he said:

By Mr. Storey:

Q. Did you examine the books and ascertain what it cost to drill well No. 1?

A. Yes, sir.

Q. And also well No. 2?

A. I did.

Q. What did you find to be the cost of drilling Well No. 2?

A. It shows the cost of drilling Hunsicker Well No. 2 to be \$8066.97.

Q. What did it cost to operate it?

A. The cost of operating the well to January 1st, 1918, was \$16,347.46.

Q. I see in this statement the cost of drilling well No. 1 is \$17,488.07, that is the well we are making no claim for, so strike that out of the statement.

(Witness strikes same out).

Counsel for defendants offers the statement referred to as cost of drilling and operating, in evidence.

39 On Re-direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, referring further to the statement marked Exhibit "H" in the Hunsicker case, I will ask you to state what is the difference in the account between the total production and the counter claim?

A. The difference between the total value of the oil produced from the well and the counterclaim is \$31,362.66.

Q. How do you arrive at the figures that you have just read, showing the total difference between the counter claim and the production?

A. The total production or the value of the total production from the well in suit was \$55,776.87 and the total cost of drilling and operating Well No. 2 was \$24,414.43, and taking that from the value of the production leaves the difference of \$31,362.46.

Q. What do the records show with reference to who received the total production of the oil?

A. The Texas Company ran the oil, run the oil from the land in question and divided the oil as between the parties interested.

Q. What Company produced all of the oil from the land, the Producers Oil Company?

A. Yes, sir, the Producers Oil Company.

Q. The Producers Oil Company made delivery to the Texas Company by putting the oil in the tanks on the land in controversy?

A. Yes, sir.

Q. The Texas Company removed the oil from these tanks by running it into their pipe line?

A. The Texas Company connected its pipe line with the tanks on the land and run the oil from those tanks.

Q. Mr. Neal, was all of the oil, about which you have testified, produced by Well Number Two?

A. All of the oil which I have testified to, was produced from Well No. 2, as shown by the run tickets. Well No. 2 was run into a tank by itself, and for a while wells Nos. 2 and 3 were operated together, and during that time it was estimated.

Q. Did you assist in making the estimate of the production of Well Number Two, while it was operated in connection with other wells?

A. Yes, sir.

40 Q. You are satisfied of the correctness of the estimate that has been made?

A. I am satisfied with the estimate.

Q. Do your records show when Well No. 2 was drilled?

A. No, I have that date in the office. I have examined the records of the Producers Oil Company as to the date of the drilling of the wells on this claim and I find that Hunsicker No. 2 was begun on March 19th, 1911.

Q. The derrick was built March 19th, 1911?

A. Yes, sir, the drilling of the well was begun April 1st, 1911.

Q. Well Number one did not produce any oil, according to your investigation?

A. Well Number one did not produce oil.

Q. Now, referring to case No. 1159, United States vs. Arkansas Natural Gas Company, state whether or not you made an examination of the records of the Arkansas Natural Gas Company, and what you found in reference to the production and value of gas, on the land in suit?

A. I made an investigation of the records of the Arkansas Natural Gas Company at Little Rock, Arkansas and found that from July 1st, 1911, when the well known as Hanszen No. one was turned into the pipe line, to September 30th, 1912, when that well ceased to produce, there was sold by the Arkansas Natural Gas Company 4,744,853,000 cubic feet of gas. The records of the Company show that the Company purchased from other wells, which gas was measured into the Company's pipe line 2,395,933,000 cubic feet of gas. Deducting the amount purchased by the Company from the total amount sold by the Company there was left 2,348,845,000 cubic feet of gas, which gas was produced by five wells owned by the Arkansas Natural Gas Company, and taking one-fifth of the total production of the five wells, as the amount produced by

the well in suit, I find that 469,769,000 cubic feet of gas was produced by the well known as Hanszen No. 1. I find from the records of the Company, that the Company paid  $1\frac{1}{2}$  cents per thousand cubic feet at the mouth of the well, in this gas field, so that the value of the gas produced from this well was \$7,046.54.

I also found that the Company paid royalty or rental for the use of the land, right to drill and operate the well from May, 1910, to May, 1916, \$1400.00, which was paid by the Company to the royalty owners, and divided as follows:

41

Warren H. Matthews $\frac{1}{8}$ .....	\$175.00
Mrs. Lydia Hanszen McMullen $\frac{1}{2}$ of remainder .....	612.50
Dillard P. Eubanks $\frac{1}{2}$ of remainder ..	306.25
Sam W. Mason, remainder .....	306.25

Q. Mr. Neal, state whether or not the estimate about which you have testified, is in your opinion a correct estimate of the quantity and value of the gas produced by the well in suit?

A. The estimate is as near correct as a statement can be made at this time.

Q. Do you find a separate record taken of the production of this well?

A. No special record was kept, no separate record was kept.

Q. State whether or not any representative or employee of the Arkansas Natural Gas Company co-operated with you in the making of the statement about which you have testified, if so who was it?

A. Mr. E. J. Cowles, who is in charge of the operations of the Arkansas Natural Gas Company assisted me in making the statement that I have testified to.

Q. You and Mr. Coweles agreed upon the statement?

A. Mr. Cowles and I agreed upon the statement.

Q. I hand you statement marked Plaintiff "I" and referring to that portion of the statement that shows the quantity and value of gas and the royalties and I will ask you to state whether the same is a correct statement.

A. The statement is correct.

Counsel for Plaintiff offered in Evidence the statement marked Plaintiff "I" and identified by the witness insofar as it relates to the quantity and value of the gas taken from the land in controversy, and division of the royalty.

Filed in Evidence and marked exhibit "I."

Q. Does it likewise show when the well was begun?

A. Yes, sir.

Q. What was that date?

A. July 16th, 1910.

Q. How did you obtain that date?

42 A. From the records of the Company.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, in your examination of this particular case, did you make any inquiry as to when the gas was turned into the line from this well?

A. The records of the Company showed that the gas was turned into the line July 1st, 1911.

Q. And was run into the line for how long?

A. Until September 30th, 1912.

Q. Was any guage kept of this well?

A. No separate guage was kept of the well.

Q. Your idea then in arriving at an estimate of the amount of gas from this well is by taking the total amount

of gas sold by the Arkansas Natural Gas Company, between those dates and subtracting from that amount of gas purchased by the Company then divide the remainder, by the number of wells embraced in the operation of the Natural Gas Company?

A. That is correct.

Q. You have no data, of a separate guage of this well?

A. No, sir.

Q. Your idea then is merely to divide the amount of gas produced by the Arkansas Natural Gas Company, by five as that was the number of wells owned by the Company?

A. Yes, sir, that is correct.

Q. The statement that you filed in evidence is correct?

A. It is.

Q. As to the number of feet of gas and the value of the gas and the basis on which the gas was purchased and sold.

A. The statement shows the basis of the purchase of the gas at the mouth of the well on the land.

Q. The data, as far as it concerns the quantity of gas, price and basis is correctly stated in that statement?

A. Yes, sir, correctly stated.

13 On Re-direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, did your investigation show that the well was drilled on the land involved in suit?

A. Yes, sir.

Q. Referring now to the case No. 1168, United States vs. W. H. Matthews, please state whether or not you made any examination of the books of the Pure Oil Operat-

55



ing Company, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana with reference to the production and value of the oil taken from the land involved in this suit, and if so, what was the result of your investigation?

A. I made such an investigation. My investigation shows that the Gulf Refining Company of Louisiana, run from the land involved in this case, from August, 1911, to February 27th, 1912, inclusive, \$20,099.23 barrels of oil of the value of \$12,572.85; the Gulf Refining Company of Louisiana records show this oil and value was divided and paid for as follows: L. Hanszen McMullen 3-64ths, 942.15 barrels of the value of \$589.32; Sam W. Mason 1-64th, 314.05 barrels of the value of \$196.45; D. P. Eubanks 1-64 or 314.05 barrels of the value of \$196.45; F. A. Leonard 1-64, 314.05 barrels of the value of \$196.45; W. H. Matthews 1-64, 314.05 barrels of the value of \$196.45; H. E. Barnes, 1-64, 314.05 barrels of the value of \$196.45; Total royalty paid by the Gulf Refining Company of Louisiana, \$2,512.50 barrels of the value of \$1,571.60; The Pure Oil Operating Company 7-8 of the oil produced 17,586.83 barrels of the value of \$11,001.25; the records of the Standard Oil Company of Louisiana show that the Company run from the land in suit from February 27th, 1912, to December 31st, 1917, a total of 69,989.59 barrels of oil of the value of \$68,544.98. This oil and value was divided by the Standard Oil Company of Louisiana as follows: L. Hanszen McMullen 3-64 3,280.79 barrels of oil of the value of \$3,213.13; F. A. Leonard 1-64 1,093.62 barrels of oil of the value of \$1,071.05; D. P. Eubanks 1-64 1093.52 barrels of oil of the value of \$1,070.99; W. H. Matthews 1-64 1,093.64 barrels of oil of the value of \$1,071.05; Natalie Oil Company 157.08 barrels of oil of the value of \$242.53, H. E. Barnes and H. L. Heilperin 936.43

44 barrels of oil of the value of \$828.48; Sam W. Mason 1-64 1,093.61 barrels of oil of the value of \$1,071.05; Total royalty paid by the Standard Oil Company of Louisiana 8,748.69 barrels of oil of the value of \$8,568.28. Pure Oil Operating Company 7-8 61,240.99 barrels of oil of the value of \$59,976.70; Total royalty paid by the Gulf Refining Company of Louisiana and paid and held in suspense by the Standard Oil Company of Louisiana is 11,261.09 barrels of oil of the value of \$10,139.88; the grand total paid the Pure Oil Operating Company by the Gulf Refining Company of Louisiana and paid and held in suspense by the Standard Oil Company of Louisiana is 78,827.73 barrels of oil of the value of \$70,977.55; the total oil produced on the land is 90,088.82 barrels of the value of \$81,117.83.

Q. Mr. Neal, referring to these oil payments of the Standard Oil Company of Louisiana, as I understand it, you have figured the Standard Oil Company has taking the runs from February 27th, 1912, to December 31st, 1917, have you not?

A. I have.

Q. The Standard Oil Company has put in the record a statement showing the total amount taken from the land to April 1st, 1918, you did not figure that part?

A. I did not check the records of the Standard Oil Company from January 1st, 1918, to April 1st, 1918.

Q. I hand you statement marked Plaintiff "J", in suit No. 1168, entitled United States vs. W. H. Matthews, et al., and referring to that portion of the statement that relates to the production, value and division of the oil, I will ask you to state whether or not that is correct?

A. The statement is correct?

Q. Was the statement made from the books of the various companies?

A. It was.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "J", insofar as the same relates to the production, value and division of the oil taken from the land in controversy.

Filed in evidence and marked exhibit "J."

Q. Did you ascertain from your examination the date when the wells were drilled?

A. I have seen that statement but I have not the original record here (witness examines documents).

45 The records of the Pure Oil Operating Company shows that Hanszen Well No. 1 was not drilled. Well No. 2 was begun to be drilled June 20th, 1911, and completed August 3rd, 1911; Well No. 3 was begun May 4th, 1912 and completed June 7th, 1912; Well No. 4 was begun November 20th, 1913 and completed December 31st, 1913.

Q. I will ask you to state whether Well No. 5 was drilled on the land in suit?

A. Well No. 5 was just over the line, outside of the land involved.

Q. Did Well No. 5 produce oil?

A. Well No. 5 never produced any oil.

Q. From what wells was the oil in controversy taken?

A. Wells Numbers 2, 3 and 4.

Q. Did your investigation show that those wells were drilled on the land in suit?

A. Those wells were drilled on the land in suit.

Q. In your investigation, I will ask you to state who drilled the wells involved in this suit?

A. The Pure Oil Operating Company.

Q. The Pure Oil Operating Company delivered the oil to the Gulf Refining Company of Louisiana and to the Standard Oil Company of Louisiana in the tanks situated on the land in controversy?

A. Yes, sir.

Q. These companies removed the oil from the land through their pipe lines?

A. Yes, sir.

Q. Do the records show the oil was sold to the Gulf Refining Company and the Standard Oil Company of Louisiana by the Pure Oil Operating Company?

A. The records show that the entire production from the wells was run into the pipe lines of the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and the division made of the oil by those companies. It is my understanding of the records that each of the royalty claimants sold their oil, as it was divided by the respective companies.

Q. What was the total amount, in value and oil produced from the wells, situated on the land in  
46 suit, by the Pure Oil Operating Company?

A. The grand total of the oil produced by the Pure Oil Operating Company, on the land was 90,988.82, barrels of oil valued at 81,117.83. Of this the Pure Oil Operating Company received as its share 78,827.73 barrels of the value of \$7,977.95.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, the only connection the Standard Oil Company of Louisiana and the Gulf Refining Company of Louisiana have in this litigation is that those companies purchased the oil produced from the property?

A. Yes, sir.

Q. The operate pipe lines in this field and purchase oil that is produced in the field?

A. Yes, sir.

Q. In your examination of this case, did you investigate sufficiently to satisfy yourself as to the cost to the

Pure Oil Operating Company for the drilling, equipping and operation of each of the three producing wells, for the production of which this suit is brought?

A. Yes, sir.

Q. Will you state whether the result of your investigation appears on the statement referred to?

A. It does.

Q. What was the total cost of drilling, equipping and operating of these three wells?

A. The total cost of drilling, equipping and operating the wells to December 31st, 1917, was \$59,576.36.

Counsel for Defendants offers the statement referred to as Plaintiff's Exhibit "J" in evidence.

On Re-direct examination he said:

By Mr. Hunter:

Q. I will ask you to state the difference between the cost of drilling and equipping the wells in suit, Nos. 2, 3 and 4, and the total production of the oil, the difference in amount?

47        A. The difference between the total value of the oil produced and the cost of drilling, equipping and operating is \$21,541.47.

Q. That is shown on the statement?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. Referring to the statement in suit No. 1168, what does your statement show as the total profit made by the Pure Oil Operating Company from the wells?

A. My statement shows that the Pure Oil Operating Company received to December 31st, 1917, \$70,977.95, and deducting from this the cost of drilling, equipping and operating \$59,576.36, there is left as the net value received by the Pure Oil Operating Company \$11,401.59.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Is it not a fact that the Pure Oil Operating Company produced all of the oil from this land, drilled the wells and produced the oil?

A. The Pure Oil Operating Company drilled the wells and produced all of the oil from the land.

Q. The difference between the total value of the oil produced and the total cost of drilling and equipping the wells was what?

A. \$21,541.47.

Q. Now taking up the case No. 1170, United States vs. D. P. Eubanks, et al., I will ask you to state whether or not you made an examination of the records of the Gulf Refining Company of Louisiana in order to ascertain the quantity and value of the oil produced from the land in suit?

A. Yes, sir.

Q. What was the result of your investigation?

A. My investigation shows that the Gulf Refining Company of Louisiana ran from the land in question from September, 1910, to August, 1913, when well ceased to produce a total of 7,130.93 barrels of oil of the value of \$4,806.43. The oil was divided as follows: J. L. Urquhart 297.10 barrels of the value of \$200.21; T. D. 48 Starnes 148.58 barrels of the value of \$100.12; Eugene Hanszen 32.96 barrels of the value of \$31.30; J. B. Files 445.67 barrels of the value of \$300.38;

D. P. Eubanks 561.15 barrels of the value of \$369.14. Making the total royalty paid of 1485.46 barrels of the value of \$1001.15. The Gulf Refining Company of Louisiana, retained as its shares of the oil 5645.47 barrels of oil of the value of \$3805.28. The pipe line earnings of the Company was \$713.09.

Q. Mr. Neal, I hand you statement marked Plaintiff "K", insofar as it shows the production and value of the oil in suit and I will ask you to state whether that statement in that respect is true?

A. It is true and correct.

Q. From whom was the information received, upon which that statement is based?

A. From the records of the Gulf Refining Company of Louisiana.

Q. From your investigation of this matter, did you ascertain that the well was drilled on the land involved in this suit, by the Gulf Refining Company of Louisiana?

A. The well was drilled on the land involved in this suit by the Gulf Refining Company of Louisiana.

Q. Mr. Neal, do you desire any further information in regard to the cost of drilling and operating in this case, than what you have in order to testify on the subject of the cost of drilling and operating?

A. I would like to have an itemized statement of the cost of drilling and equipping of the well in this suit for the purpose of checking on the ground the property removed from the well and the property moved to the well.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, have you made any investigation as to the cost of drilling, operating and equipping this well?

A. I have checked the records of the Gulf Refining Company of Louisiana, as to the cost of drilling, equipping and operating the well in this suit, and find that the total cost of drilling, equipping and operating the well September 1910 to August 1913, was \$13,628.94.

Q. Are you satisfied as to the correctness of  
49 that?

A. I am satisfied as to the correctness of that.

Q. What additional statement do you desire relative to this matter?

A. An itemized statement of the cost of the drilling and the equipment that went into the well.

Q. That is because the well has been abandoned and you wish to ascertain just how much credit should be given to them?

A. So if there is any credit.

Q. Mr. Neal, in your investigation in this suit, you have familiarized yourself with the cost of drilling a well and operating wells in this field?

A. Yes, sir.

Q. Are you satisfied from this knowledge, that it must have cost the Gulf Refining Company of Louisiana more than \$4518.37 to have operated that well, and drilled it during the time it was in operation?

A. My investigation showed that the cost to the Gulf Refining Company of Louisiana for the drilling, equipping and operating the well was \$13,628.94. In this amount however, there is included the equipment that I have no itemized statement of, which is credited to that amount.

Q. That is the equipment that has been removed from the property?

A. Yes, sir.



Counsel for defendants states that the itemized statement requested, will be furnished.

Q. Mr. Neal, with the experience that you have had in your investigation of the cost of drilling, equipping and operating wells, I will ask you if the actual cost of drilling the well to the Gulf Refining Company of Louisiana and the cost of operating the well, leaving out the question of equipment, would exceed the amount received by the Gulf Refining Company of Louisiana from the sale of the oil from that well?

A. Yes, sir.

Q. Did you make an investigation as to when drilling was begun of this well?

A. Yes, sir.

Q. What date was that?

50 A. They began drilling the well April 24th, 1910?

Q. When was the well completed?

A. I do not know.

Counsel for Plaintiff offers the statement marked Plaintiff "K" insofar as the same relates to the production, value and division of the oil taken from the land in controversy.

Filed in Evidence and marked exhibit "K."

Counsel for Defendants offers the statement marked Plaintiff "K" in evidence.

Q. Mr. Neal, did you make an examination as to the production and value of oil involved in suit No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.?

A. I did.

Q. Upon what was your examination based?

A. It was based upon an examination of the books of the purchasing companies, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, which Companies purchased all the oil run from the land in this suit.

Q. Did you also make an examination of the records of the Pure Oil Operating Company?

A. Yes, sir.

Q. What was the result of your investigation as regards the Pure Oil Operating Company, as to the production?

A. The result of my investigation shows that there was produced from Wells Nos. 1 and 5, called Hanszen Mineral Claim, from October, 1910, to December 31st, 1917, 58,633.74 barrels of oil of the value of \$47,770.81. The records of the Gulf Refining Company of Louisiana show that the Company run the oil from October, 1910, to February 27th, 1912, and that the oil was divided and paid for by that Company as follows: Lydia Hanszen McMullen 1-32 642.49 barrels of oil of the value of \$365.28; Sam W. Mason 1-64 321.24 barrels of the value of \$182.64;

51 D. P. Eubanks 1-64 321.24 barrels of the value of \$182.64; R. L. Stringfellow 1-32 642.49 barrels of the value of \$365.28; H. E. Barnes 1-32 642.49 barrels of the value of \$365.28; Total Royalty paid by the Gulf Refining Company of Louisiana \$1,461.12; The Pure Oil Operating Company received 7-8 of the oil or 17,989.49 barrels of the value of \$10,227.79. The total oil run from the land by the Gulf Refining Company of Louisiana was 20,559.69 barrels of the value of \$11,688.91; the records of the Standard Oil Company of Louisiana, show that that Company run the oil from the wells known as Hanszen Mineral Nos. 1 and 5 from February 27th, 1912, to December 31st, 1917, and that during that time the Company run from the land 38,074.05 barrels of oil

of the value of \$36,081.90. The records of the Company show that the oil was divided as follows: Lydia Hanszen McMullen 1-32 1,189.81 barrels of the value of \$1,127.56; Sam W. Mason 1-64 594.90 barrels of the value of \$563.78; D. P. Eubanks 1-64 or 594.90 barrels of the value of \$563.78; R. L. Stringfellow 1-32 1,189.81 barrels of the value of 1,127.56; Natalie Oil Company, H. E. Barnes and H. L. Heilperin 1-32 1,189.81 barrels of the value of \$1,127.56. The total value of the royalty paid and held in suspense by the Standard Oil Company of Louisiana is \$4,510.24; The Pure Oil Operating Company got seven-eighths amounting to 33,314.82 barrels of the value of \$31,571.66; the total royalty paid by the Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana, and held in suspense by the Standard Oil Company of Louisiana is \$5,971.36; the total oil and value representing the Pure Oil Operating Company's 7-8 is 51,304.52 barrels of the value of \$41,799.46.

Q. Did the Pure Oil Operating Company, one of the Defendants drill wells Nos. 1 and 5 on the land in suit, and did you learn that fact from your investigation?

A. They did, the well was drilled for that Company.

Q. The Gulf Refining Company of Louisiana took the oil from Oct., 1910 to February 27th, 1912?

A. Yes, sir.

Q. The Standard Oil Company of Louisiana took the oil from February 27th, 1912, to December 31st, 1917?

A. Yes, sir.

Q. When were the wells drilled?

A. The Hanszen Mineral No. 1, as shown by  
52 the statement of the Pure Oil Operating Company was begun to be drilled on July 15th, 1910, and completed September 10th, 1910. Well Number five was begun November 15th, 1913, and completed January 17th, 1914.

Q. Mr. Neal, I hand you statement marked Plaintiff "L" in this case and I will ask you to examine same with respect to that portion of the statement which relates to the production and value of the oil and see whether or not the same is correct?

A. The statement is correct.

Counsel for Plaintiff offers the statement identified by the witness and marked Plaintiff "L" insofar as the same relates to the production and value of the oil in suit.

Filed in Evidence and marked exhibit "L."

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, counsel for the Government asked some questions about the Gulf Refining Company and the Standard Oil Company of La. taking the oil from the land, is it not a fact that the only relation those companies had to this suit, arose out of the purchase of the oil produced by the Pure Oil Operating Company?

A. That is a fact.

Q. They did not operate any wells?

A. No, sir.

Q. Those Companies own pipe lines in the Caddo field?

A. Yes, sir.

Q. And are in the business of purchasing oil?

A. Yes, sir.

Q. They purchased oil from the Pure Oil Operating Company and lessors?

A. Yes, sir.

Q. In the course of your examination of the facts relating to these cases, did you have occasion to examine into the question of the cost of drilling, equipping and operating these two wells?

A. I did.

53 Q. Will you please state what was the cost of drilling and equipping the wells in controversy?

A. The cost of drilling and equipping the Hanszen Mineral No. 1 was \$15,324.22; the cost of drilling and equipping the Hanszen No. 5 was \$10,982.16.

Q. What was the cost of operating these wells?

A. The cost of operating the Hanszen Mineral No. 1 from August, 1911, to December 31, 1917, was \$18,512.56; the cost of operating No. 5 from July, 1914, to December 31st, 1917, was \$10,097.76.

Q. What was the total cost to the Pure Oil Operating Company for drilling and operating up to December 31st, 1917?

A. \$54,916.70.

Q. What was the total value of the oil produced by the Pure Oil Operating Company, as its 7-8?

A. \$41,799.46.

Q. You are satisfied with the correctness of those figures?

A. Yes, sir.

Counsel for Defendants, in connection with this cross examination, offers the statement referred to as Plaintiff Exhibit "L" in evidence.

Q. Mr. Neal, you have stated that the drilling of the Hanszen No. 1 began July 15th, 1910, by that do you mean the actual boring?

A. That is my understanding of it. The records show that drilling began that day.

Q. It took of course some time previous to that to get the derrick up and the rig in place and make the necessary preparations to start to drilling?

A. Yes, sir. Of course I do not know that of my personal knowledge.

Q. You do not know, of your own personal knowledge anything about the date they began work in preparing to begin drilling?

A. I do not.

On Re-direct examination he said:

By Mr. Hunter:

Q. How was the oil taken from the land by the Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana?

A. The Gulf Refining Company of Louisiana  
54 and the Standard Oil Company of Louisiana  
connected their pipe lines with the tanks constructed on the land, into which tanks the wells were pumped.

Q. The oil was sold by the Producing Company to these Companies?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. The Pure Oil Operating Company constructed these tanks on the property?

A. Yes, sir.

Q. And the oil was pumped from the wells into those tanks?

A. Yes, sir.

Q. And the Pipe line Companies purchased the oil and took the oil from the tanks?

A. Yes, sir.

By Mr. Storey:

Q. That is true with reference to all other Companies developing oil and delivering it in the field?

A. Yes, sir.

Q. The statement shows the amount of royalties paid and held in suspense, have you any data showing that held in suspense?

A. The Standard Oil Company's statement shows the amount of oil held in suspense, as I understand it. The Company suspended the payment of all royalties after this suit was filed and held the value of the oil in suspense.

Q. Is there any data in the record showing the amount paid in royalties and the amount held for the account of the Royalty Owners?

A. Yes, sir.

On Re-direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, I direct your attention to suit No. 1172, entitled United States vs. Sam W. Mason, et al, and will ask you to state whether or not you made an examination of the books and records of the Gulf Refining Company of Louisiana, in order to ascertain the quantity of the oil produced from the land in suit, and its value?

A. I made such an investigation.

55 Q. Did you make a statement showing the production, value and division of the oil?

A. I did.

Q. Please state what you found with reference to the total production up to December 31st, 1917?

A. The records of the Gulf Refining Company of Louisiana shows that that Company run the oil from the land in question from May, 1910, to December 31st, 1917,

and that a total of 94,004.43 barrels of oil of the value of \$67,732.94. The records show a division of the oil as follows: R. L. Stringfellow and J. B. Stockley 396.63 barrels of the value of \$158.65; Mrs. Lydia H. McMullen 7,041.08 barrels of the value of \$3,708.30; E. Hanszen 941.87 barrels of the value of \$952.44; D. P. Eubanks 1,883.71 barrels of the value of \$1,905.00; Sam W. Mason 1,883.71 barrels of the value of \$1,905.00; R. L. Stringfellow 2,346.74 barrels of the value of \$1,776.54; J. B. Stockley 1,173.34 barrels of the value of \$888.27; the total royalty paid and held in suspense by the Gulf Refining Company of Louisiana was \$11,294.20.

Q. Does the statement show how much royalty has been paid and how much is held in suspense?

A. No, sir, the statement don't show; the statement of the Gulf Refining Company of Louisiana as shown on page 4 of this statement shows the amount of royalties that has been paid, each royalty claimant and the amount held in suspense by the Gulf Refining Company of Louisiana. The total value of the oil retained by the Gulf Refining Company of Louisiana, as its share from this land was \$56,438.75; the pipe line earnings on oil run was \$8,367.97 showing a total of \$64,806.71.

Q. Do your records show how many wells were drilled on this tract of land and when they were drilled?

A. There is just one well on the tract known as Mason Mineral No. 1.

Q. When was the first work done?

A. The first work done, according to the records of the Gulf Refining Company of Louisiana, was April 16th, 1910.

Q. What do the records show with reference to who drilled the well on this land?

A. The well was drilled by the Gulf Refining Company of Louisiana.



Q. You made this statement, did you not?

A. Yes, sir.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "M" identified by the witness, insofar as it relates to the production and value of the oil taken from the well in suit.

Filed in Evidence and marked exhibit "M."

On Cross Examination, he said:

By Mr. Herold:

Q. Mr. Neal, have you had occasion in the course of your official duties to investigate and ascertain the cost of drilling, equipping and operating this well?

A. I did.

Q. To your satisfaction?

A. Yes, sir.

Q. What was the total cost for drilling, equipping and operating the well to December 31st, 1917?

A. \$34,067.13.

Q. In your testimony and in your statement, you make reference to pipe line earnings on oil runs, what do you mean by that?

A. The Gulf Refining Company of Louisiana operates a system of pipe lines from the district in which the oil is produced, to connect with their receiving tanks on the Texas line and the sum of five and ten cents per barrel is charged for the oil run through that line.

Q. In other words it is for the carriage of the oil?

A. Yes, sir, that is supposed to be deducted from the market value of the oil, as I understand it.

Q. This amount that you have placed on your statement here, of pipe line earnings of oil run, is in addition to the market value of the oil the day it was produced?

A. The amount if in addition to the amount allowed for the oil in the tanks on the land represents the Gulf Refining Company delivered in the tanks on the Texas line, which would be \$8,367.97 in addition to the amount paid in the field.

Q. The sum of \$56,438.74 represents the value of the oil in the tanks on the day that it is produced?

A. It represents the value of the oil on the land?

Q. On the basis of the market price of the oil at the time it was produced?

A. Yes, sir.

Q. And the \$64,806.71 represents not the value of the oil in the tanks on the property, but the value of the oil delivered on the Texas line?

A. Yes, sir.

Q. That is to say the value of the oil, plus the freight or pipe line charges?

A. Yes, sir, that is correct.

In connection with the cross examination of the witness counsel for defendants offers the document heretofore marked Plaintiff "M" in evidence.

On Re-direct Examination he said:

By Mr. Hunter:

Q. This statement shows, does it not—your investigation shows in connection with the statement that the Gulf Refining Company of Louisiana produced the oil from this tract of land of the value of \$67,732.93?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. That is the value delivered on the Texas line?

A. That is the value in the field with the royalties.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. That amount including the piping?

A. No, sir, the amount stated as the amount of the value of the oil in the tanks on the land.

58 Counsel for Plaintiff offered in Evidence in the case of the United States vs. Arkansas Natural Gas Company, No. 1159, a certified extract from the Louisiana tract book showing the situation in Section Twenty-eight, Township Twenty-two North of Range Fifteen West, Louisiana meridian.

Filed in Evidence and marked exhibit "N."

Counsel for Plaintiff offered in Evidence in these consolidated case, a certified copy of letter dated June 1st, 1911, from the Assistant Commissioner of the General Land Office, to the Honorable Murphy J. Foster, said letter having previously been offered in the suit of the United States vs. Henry Hunsicker, No. 1156, and marked Plaintiff "A" therein.

Filed in Evidence and marked exhibit "O".

Plaintiffs rest.

Counsel for Defendants offers in Evidence in the case of the United States vs. Henry Hunsicker, No. 1156, notice of location of Henry Hunsicker, et al., filed and recorded March 22nd, 1910, as recorded in Conveyance Book No. 69, page 216 of the Recorder's office of Caddo Parish, Louisiana.

To be filed in Evidence and marked Defendants No. 2.

Counsel for Defendants offers in evidence the notice of location of C. J. Greene, Jr., filed and recorded March 22nd, 1910, as recorded in Conveyance Book No. 59, page 216 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit No. 3.

Counsel for Defendants offers in Evidence Power of Attorney from Charles J. Greene, Jr., dated March 22nd, 1910, to Henry Hunsicker and lease executed by C. J. Greene, Jr., by Henry Hunsicker, Attorney in fact and by Henry Hunsicker, to the Producers Oil Company, dated March 28th, 1910, filed and recorded August 18th, 1911, recorded in Book No. 67, page 621 of the  
59 Recorder's Office of Caddo Parish, Louisiana.

Filed in Evidence and marked exhibit No. 4.

Counsel on behalf of the Texas Company Division Order dated August 8th, executed by the Producers Oil Company, C. J. Greene, Jr., and Henry Hunsicker, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit No. 5.

In suit No. 1154, United States vs. W. W. Green, et al., Counsel for Defendant offers in Evidence act of sale from Humphreys Oil and Gas Company to Palmer and Heilperin attached to and made a part of the answers herein on Mrs. H. L. Heilperin to the Interrogatories.

Filed in Evidence and marked exhibit No. 6.

Counsel for Defendants Pure Oil Operating Company offers in evidence notice of Mineral location by Lydia Hanszen, et al., dated April 2nd, 1910, as recorded in Conveyance Book 59, page 267 records of the Parish of Caddo, with leave to substitute a certified copy thereof.

To be filed in Evidence and marked exhibit No. 7.

S. L. CRONIN, a witness for the Defendants being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin, what position do you hold and with what Company?

A. I am with Ohio Central Gas Company now.

Q. In 1910, were you in charge of the interest of the Pure Oil Operating Company in the Caddo field?

A. Yes, sir.

Q. Are you familiar with what is known as well Greene No. 1?

A. I am.

Q. That well, I believe was drilled by the  
60 Humphreys Oil and Gas Company, on a lease of  
W. W. Green?

A. Yes, sir.

Q. Who claimed under a Mineral location?

A. Yes, sir.

Q. Did they set up any claim?

A. Yes, sir, as lessees.

Q. Of whom?

A. Mrs. Hanszen, Eubanks and Barnes.

Q. That is the land embraced in the suit of the United States against Mrs. McMullen, et al?

A. Yes, sir.

Q. You claim that the Gilbert No. 1 was on the Hansen land?

A. Yes, sir. We thought that the section line was South of that well.

Q. In other words the section line was located different from what the surveyors located it?

A. Yes, sir.

Q. This well was situated between the line run by Green and as run by you?

A. Yes, sir.

Q. After Heilperin and Palmer acquired the rights of the Humphrey Oil and Gas Company you acquired your rights?

A. Yes, sir.

Q. Now, what was the nature of that agreement?

A. We took that well over under a compromise trade with Mr. Heilperin. I could not go into the details, but it was a pretty long agreement.

Q. You set up that June 16th, 1914, that you made an agreement with Heilperin and Palmer, under which you took over the operation of the well?

A. Yes, sir.

Q. The Pure Oil Operating Company continued to operate that well after that date?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. This well was drilled by the Humphrey's Oil and Gas Company under the W. W. Greene Mineral  
61 location?

A. Yes, sir, that was what they knew it as, that is what it was commonly called.

Q. W. W. Green location?

A. Yes, sir.

Q. After the Pure Oil Operating Company took over the well under the agreement with Palmer and Heilperin. W. W. Green continued to receive the royalties?

A. I could not tell you?

Q. Don't your records show, or did you sever your connections?

A. No, sir, but I have not looked at the old agreement, and could not say about that division order, so that I do not know who all the owners were. I done all my trading with Mr. Heilperin.

Q. At any rate the Pure Oil Operating Company did not drill this well?

A. No, sir.

Q. They took over the well from the assignees of W. W. Green?

A. Yes, sir.

Q. And operated under an agreement?

A. Yes, sir.

Q. Green did make a mineral location, did he not?

A. I never examined the records, but he was on there.

Q. Claimed a mineral location?

A. Yes, sir.

On Re-direct examination he said:

By Mr. Herold:

Counsel for Defendants offers in Evidence the contract between H. L. Heilperin and ..... Palmer, and the Pure Oil Operating Company, annexed to the answer of the Pure Oil Operating Company to the interrogatories.

Q. The net result of the Pure Oil Operating Company's connection with this well was a loss?

A. Yes, sir.

In suit No. 1159 entitled United States vs. Arkansas Natural Gas Company.

62 JAMES W. NEAL, being sworn as a witness for defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Neal, in your examination of the case of the United States vs. Arkansas Natural Gas Company, did you have occasion to make an investigation of the cost of drilling the well?

A. Yes, sir.

Q. Can you state what was the cost of the drilling of that well?

A. The cost of drilling and equipping the well known as Mason No. 1, Arkansas Natural Gas Company was \$4,842.30?

Q. Royalties were paid by the Arkansas Natural Gas Company, in what sum?

A. The royalties, either rentals or royalties were paid of two hundred dollars a year was paid by the Arkansas Natural Gas Company from May, 1910, to May, 1916, amounting to \$1400.00.

Q. Making a total expense to that Company of how much?

A. A total expense to the company of \$6,242.12.

Q. And according to your statement making a total profit to the Company of how much?

A. \$804.42.

On Cross Examination he said:



By Mr. Hunter:

Q. Mr. Neal, referring to this case and your statement marked "I" I will ask you to state what is the difference between the value of the gas produced in this case and the cost of drilling and operating the well, without reference to the amount of royalties paid by the Arkansas Natural Gas Company?

A. The difference between the total value of the gas from the well and the cost of drilling and equipping the well is \$2204.42.

Q. Is that shown on the statement?

A. That is shown on the statement.

W. G. LEET, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Leet, in what business are you engaged?  
63

A. Manufacturing of gasoline at the present time.

Q. You have been in the business of piping and selling natural gas?

A. Yes, sir.

Q. For how many years?

A. About twenty-four years, twenty-three or twenty-four years, over Twenty years.

Q. You are familiar then with the method of measuring gas?

A. Yes, sir.

Q. The gas being handled, gas being of a gaseous substance, of course the amount of gas contained in a given receptacle at any time depends upon the pressure?

A. Yes, sir, in proportion to the atmosphere.

Q. What is the atmospheric pressure?

A. Accurately speaking 14,781 thousand pounds per square inch but we always use fifteen pounds to the inch flat in calculating gas measurement.

Q. A given quantity of gas, say a thousand feet, the atmospheric pressure would be less than a thousand pounds, be a pressure greater than the atmosphere the greater the pressure, if greater than the atmosphere the smaller space it would fill cubically?

A. Yes, sir.

Q. I notice in the statement furnished by Mr. Neal, that a portion of the gas shown on the statement was measured at eight ounces base, that is eight ounces above the atmospheric pressure?

A. Yes, sir.

Q. Other portions of the statement figure on a ten pound base, which means ten pounds above atmospheric pressure?

A. Yes, sir.

Q. The statement furnished by Mr. Neal of the amount of gas run by the Arkansas Natural Gas Company from July 1st, 1911, to April 30th, 1912, is given as 4744838 thousand cubic feet based on an eight ounce base, there is subtracted from that as gas purchased from other concerns run into the man 2,395,993.000 cubic feet on ten ounce base. If that quantity of gas figured at a ten pound base were figured at an eight ounce base, what would be the amount of gas so purchased from other concerns?

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A. It would be, that is to say 2,395,993,000 cubic feet purchased of a ten ounce base, at an eight ounce base would be 2,662,221,000 cubic feet.

Q. Or how many million feet more?

A. 313,269,000 feet more, than if figured on a ten ounce base, an increase of approximately twenty-six per cent, I should judge.

Q. Then the difference between the amount of gas purchased and the amount of gas sold would be reduced by just that amount?

A. The selling pressure would be increased just that much, the purchase pressure reduced that much—I might make it a little plainer by stating the difference between the amount of gas sold at eight ounce and the same amount bought at ten pound pressure, would be 313,369,000 feet.

Q. In order to measure, to make a comparison of the two amounts in the two items we have to figure them at the same basis?

A. Yes, sir.

Q. Now subtract, figure both the purchase and sale of the gas on eight ounce base, would not the difference between the two be reduced by the amount you have just given of 313,369.00?

A. In the base of eight ounce selling it would.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Leet, have you examined the statement marked Plaintiff "I"?

A. Just a part of it, I did not notice all of it.

Q. Mr. Neal stated that this statement has been compared by himself and a representative of the Arkansas Natural Gas Company, and that they agreed upon this statement as to the quantity and value of the gas gotten from this line, now referring to the amount of gas extracted from the land, I will ask you to state, in the event this gas was transported, in a pipe line from the well to

Little Rock, Arkansas, whether or not there would be any leakage?

A. Yes, sir, there would be.

Q. Would that have any bearing upon the calculation, made by Mr. Neal and a representative of the Arkansas Natural Gas Company, as shown by this statement?

65 A. Well, that is rather a difficult question to answer, yes or no, I may state that previous to the activity of the Conservation Commission two years ago, the leaking was very much more than now, and we used to figure it run from forty to fifty per cent, and the contracts were usually based on a ten ounce basis, which generally took care of the leakage and a little more, but they wanted to sell the gas and willing to make that contract, and they usually delivered it under those conditions. What the conditions are in this agreement here I do not know. I make that statement because the contracts were to deliver the gas at the well for so much per thousand, ten pounds basis, be in recent years the leakage has been unusually small, as the Arkansas Natural Gas people watch those things well, and do not have any leaking except comparatively small.

Q. You do not represent the Arkansas Natural gas people?

A. No, sir, none whatever.

Q. You are not familiar with the figures used by Mr. Neal and their Agent in making up this statement?

A. No, sir, only what they say on the statement.

Q. Assuming that this gas was run, as shown on the statement from July 1st, 1911, to September 30th, 1912, you see nothing unusual in the calculation made in this case?

A. Well, it is inaccurate, inasmuch as the subtraction was made based on ten pounds and the sale price was

at the eight ounce but there is nothing unreasonable about it at all, at least we would not think so, and I would not say so unusual, either unusual or unreasonable.

Q. Such calculation would be in accordance with the custom prevailing at that time, from July 1st, 1911, to September 30th, 1912?

A. Yes, sir, that would be in accordance with conditions at that time.

Q. So that this calculation which shows the production of 4,744,838,000 cubic feet at the 8 ounce base, showing the amount of gas purchased at the ten ounce base, was in accord with the usual practice at that time?

A. Yes, sir. Of course the method was the same, only  
 66 as I tried to explain the contracts at that time, was reasonable for it, of course the basis was the same now as then.

Q. But the practice of handling gas was different at that time?

A. Yes, sir, for the past two years more particular, since the conservation commission has become active. The members of the Commission do not seem disposed to allow anyone to allow a leak, they propose to stop the leaks, that is the basis they work on, and I think there are some new contract based on pretty nearly the same thing.

On Re-direct examination he said:

By Mr. Herold:

Q. Have you heard of any contracts within the last few years of anything less than a two pound base?

A. I do not remember of any.

Q. In other words the ten pound basis was only used at that time when there was a limited market and a large supply?

A. Well, that is pretty nearly so. And as I say at the present time the disposition is to eliminate the leakage proposition entirely and try to make contracts based on figuring no leakage or a very small leakage.

Counsel for Defendants offer in evidence the notice of mineral location of Lydia Hanszen and Sam W. Mason, dated or recorded May 11th, 1910, in book No. 59, page 439 of the records of Caddo Parish, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in Evidence act of lease from Lydia Hanszen to H. L. Grayson, dated May 23rd, 1910, as recorded in Conveyance Book .... page .... of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offers in evidence assignment of lease from H. L. Grayson to the Arkansas Natural Gas Company as recorded in Conveyance Book ...., page .... of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

67      In suit No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.

Counsel for Defendant offers in Evidence notice of mineral location, dated April 2nd, 1910, as recorded in Conveyance Book No. 59, page 267 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in evidence act of lease dated April 21, 1910, from Mrs. Lydia Hanszen, et al., to E. H. Jennings, as recorded in Conveyance Book No. 59,

page 355 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in evidence Act of Assignment of E. H. Jennings to the Pure Oil Operating Company dated June 6th, 1911, as recorded in Conveyance Book No. 66, page 665 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

SAM W. MASON, a witness for the Defendant being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Mason, you are one of the defendants in this case?

A. I am.

Q. One of the parties who made the mineral location of date April 2nd, 1910?

A. Yes, sir.

Q. Prior to making the mineral location on this property, had you consulted counsel as to your right to make the location, under the Placer Mineral Laws?

A. Yes, sir.

Q. Who did you consult?

A. I consulted Messrs. Thigpen & Herold and D. Edward Greer, one of the Attorneys for the Gulf Refining Company of Louisiana.

68 Q. You knew at that time about the order of December 15th, 1908?

A. Yes, sir, so called Roosevelt withdrawal order.

Q. What had you been advised by counsel with respect to this order?

A. I had been advised that the withdrawal order of Mr. Roosevelt had nothing to do with the location under the Placer Mineral laws for mineral development, that it only applied to other forms of entry for Homestead and locations under warrants.

Q. Had you been advised by counsel as to their construction of the power of the President to withdraw from mineral location?

A. Yes, sir, that was one of the things taken up at the time?

Q. What was the advice of counsel along those lines?

A. That the President had no authority, under the United States Placer Act to locate land to withdraw those lands from location for that purpose.

Q. And you proceeded to make location under that advice from counsel?

A. We did.

Q. The same counsel to which you have referred?

A. Yes, sir.

Q. In making the location did you all take physical possession of the property?

A. We did.

Q. By whom was the actual work of drilling the first well done on the Hanszen location?

A. By the Pure Oil Operating Company.

Q. Under a lease from the mineral locators?

A. Yes, sir.

Q. Can you testify on what date the work was begun, on the Hanszen claim?

A. Yes. I have not the exact date of that, I was not there at the time the well was commenced.

Q. You were not there when the well was commenced?

A. No, sir.



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On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Mason, you were asked whether after making the mineral location physical possession was taken of the land, and I understood you to say there was?

A. Yes, sir.

Q. In what way was physical possession taken?

A. Well, we put a man on it, put a man on each one of these claims and he stayed there continuously until the lessees took possession.

Q. Was that land fenced?

A. Well, the Hanszen claim was fenced.

Q. When was it fenced?

A. The next day after the location.

Q. The entire claim?

A. Yes, sir, the fence was around the entire claim.

Q. What else was done?

A. Well the trees were marked around the location and notices put up at the various corners, a verbatim copy of the notice filed in the office of the Recorder.

Q. A copy of the mineral location?

A. Yes, sir, all made out, with the description, signature and everything that is on the original and they were placed on the claim.

Q. What was the Principal point relied upon by counsel in their advice to you as to the alleged invalidity of the first withdrawal order?

A. Two reasons were given. In the first place, it did not specifically withdraw from entry under the Placer mineral act, and in the second place, I was advised that they could find no authority for the President, no Executive authority of the President to suspend the operation of that Statute.

CRONIN, a witness for the Defendants being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin you have testified that you were in charge of the operations of the Pure Oil Operating Company in 1910?

A. Yes, sir, operating under the name of E. H. Jennings.

Q. Who was E. H. Jennings?

A. He was the President of the Pure Oil Company.

Q. At the time that this lease was taken it is shown to have been taken in the name of E. H. Jennings, but it belonged to the Pure Oil Operating Company?

A. Yes, sir, as they had not taken out a permit to do business in the State at that time?

Q. Until the Pure Oil Operating Company was licensed to do business under the name of the Pure Oil Operating Company, they did business under the name of E. H. Jennings?

A. Yes, sir.

Q. When this lease was taken by E. H. Jennings from Mes Hanszen and the other mineral locators, what did you do towards the discovery of oil?

A. We went to work and took possession of the property and went on to work on the property.

Q. When did you make the location for Well No. 1?

A. Sometime in April.

Q. When was the derrick built?

A. It was completed in April.

Q. The derrick was completed for Well No. 1 in April?

A. Yes, sir.

Q. How much did the derrick cost?

A. Two hundred and seventy-five dollars.

Q. What further steps did you all take then leading to the finding of oil or gas on the property?

A. We went on and did work there, built houses and fixed a place for our men and let the contract for the drilling of the well and had the well drilled.

Q. You built houses for the employees?

A. Yes, sir.

Q. Cleared some ground for the house?

A. Yes, sir, cleared ground.

Q. How many houses did you all build?

A. I think two small ones at that time.

Q. That was immediately following the  
71 building of the derrick?

A. Yes, sir.

Q. Did you all build a warehouse there?

A. Yes, sir, afterwards, that Summer we built a warehouse.

Q. And let the contract for the drilling of the well?

A. Yes, sir.

Q. Who to?

A. The Woolf Drilling Company.

Q. When was the contract made with the Woolf Drilling Company?

A. I have not any record to show when the contract was made. We did not have a written contract, merely had a verbal agreement.

Q. About when was that?

A. My recollection is that it was the last of April or the first of June.

Q. You think that it was the last of April?

A. Last of May or the first of June, I am pretty near certain it was.

Q. Can you tell whether or not it was before the middle of June?

A. Yes, sir, it was before the Middle of June.

Q. Can you state positively whether it was before the middle of June that you made the contract?

A. Well, just as positive as I can be, where there is a chance for a man to be mistaken. There is always a chance for a man to be mistaken.

Q. What was that contract with the Woolf Drilling Company?

A. Five dollars a foot for the work and he furnished everything, and we were to pay him for the labor if we wanted to make a test in the upper sand, was to pay him twenty-five or fifty dollars a day for that extra time.

Q. You all had nothing to do with furnishing the material for the well?

A. No, sir.

Q. You were to pay five dollars per foot for the well?

Q. All of the material was furnished by the Contractor?

A. Yes, sir.

Q. The contract contemplated drilling when?

A. The well was drilled within a reasonable time. Woolf did not have a drilling outfit that he could put there at the time but he went right at it.

72 Q. How was the material brought to this land?

A. It had to be hauled in from Oil City.

Q. Were there any roads there at the time?

A. They were awful bad, had to cut a road out, and if I recollect right Mr. Woolf got stuck with the boiler.

Q. What was it necessary for the contractor to do before he commenced drilling.

A. He had to get his casing there and drilling rig, &c.

Q. What is the drilling equipment?

A. Rotary, boiler, engine and such as that.

Q. Requires a good deal of heavy material?

A. Yes, sir, very heavy, and had to go over rough roads and across the bayou.

Q. Can you testify positively Mr. Cronin, of your own personal knowledge, as to whether this contract was let during the month of June, 1910?

A. Yes, sir.

Q. You know that it was not later than June?

A. Yes, sir, I know it was not later than June.

Q. You think that it was before the middle of June?

A. Yes, sir.

Q. Was oil discovered in the first well?

A. Yes, sir.

Q. On what date?

A. It was about the 10th of September, I think it was September 10th.

Q. The well was completed September 10th?

A. Yes, sir, oil may have been discovered a few days before that.

Q. Now, before you all took this lease you consulted counsel as to the right to make the location and your rights under the lease?

A. Yes, sir.

A. I consulted L. C. Butler, Blanchard Barrett & Smith and Pugh, Thigpen and Herold.

Q. What did they advise?

A. They advise that I had a good title.

On Cross Examination he said:

73 By Mr. Hunter:

Q. Did you consult with these Attorneys with reference to the withdrawal order?

A. That withdrawal order was mentioned—I never heard of the Placer Mineral locations until I came here, April, 1910.

Q. Did you consult them with reference to the withdrawal order of December 15th, 1908, the Roosevelt withdrawal order?

A. Well, I expect that I did—I am not an Attorney, and I was in the land business and I consulted Attorneys on the title. I furnished them an abstract and asked if I had a reasonably good title, that is all that I inquired about.

Q. You knew that a mineral location had been made on this land?

A. Yes, sir, I knew it was a mineral location, whatever that was.

Q. You testified in regard to these dates, now have you used any memoranda?

A. Well the records here show that. The date I let the contract there is not any date on the record as to that.

Q. Then you are testifying from memory on that point?

A. Yes, sir.

Q. Is there anything in connection with the contract that fixes the date?

A. Yes, sir.

Q. What?

A. My wife was sick up here and my Father died and the Company allowed me to go for a month and I went home the last of the month or the first after I come here the first of April, and was at home the last of April and the first of May, and it was just as I started home that the contract was made with Mr. Woolf.

Q. Are you absolutely certain that you made that contract with Mr. Woolf during the month of June?

A. Yes, sir, just as I remember it, just as certain as I can be on anything.

Q. Mr. Woolf, of the Woolf Drilling Company, they are located in Shreveport?

A. Yes, sir.

Q. Now in regard to the time of drilling, as I understand this well was begun, or drilling was begun on the 15th of July, 1910?

A. Yes, sir.

Q. That was after the second withdrawal  
74 order, or do you know anything about that?

A. I have heard it was.

Q. When was the derrick built?

A. Built in April, completed in April.

Q. What did it cost?

A. Two hundred and seventy-five dollars.

Q. What other work did you all do on this property besides build the derrick and erect two houses?

A. Yes, sir, there was a warehouse there?

Q. How many houses for the men?

A. Two little houses for the men.

Q. Do you remember the size of those houses?

A. Just small houses, one room houses built up with screens around and a roof over, just a place for the boys to stay in, cleaned it up so as to get in shape to live there.

Q. Do you remember what those houses cost?

A. No, sir.

Q. Approximately what did they cost?

A. I could not say.

Q. They were small houses?

A. Yes, sir.

Q. One room houses?

A. Yes, sir.

Q. Built two on this tract?

- A. Built more than that later on.
- Q. You said something about a warehouse?
- A. That was built later, but I could not tell the date when that was built.
- Q. You do not know whether that was built before the second withdrawal order or not?
- A. Well, that was built afterwards.

75      In Suit No. 1170, United States vs. D. P. Eubanks, et. al.

D. P. EUBANKS, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

- Q. Mr. Eubanks, you are one of the defendants in this case?
- A. Yes, sir.
- Q. Were you present on the land in controversy on March 31st, 1910, when J. C. Gibbs made his mineral location?
- A. Yes, sir.
- Q. What did Gibbs do towards making mineral location?
- A. It was surveyed and fenced up and notices put up.
- Q. Notices were put up at each corner?
- A. Yes, sir.
- Q. Were you interested with Mr. Gibbs in this location?
- A. Yes sir.
- Q. Did you assist him in taking possession of the land, putting the fence up and posting it?



A. Yes, sir.

Q. Before the location was made did you consult any counsel as to the right to make the location?

A. Yes, sir.

Q. Who were the lawyers that you spoke to?

A. Thigpen & Herold.

Q. What, if anything, did they advise you with respect to making the location?

A. That we had a perfect right to make the mineral location, that the land was open.

Q. This location was made by Gibbs for his and your joint account?

A. Yes, sir.

Q. Do you recall how long it was after the location before the lease was made to the Gulf Refining Company of Louisiana?

A. Made in a day or two, April 2nd, I think the lease was made.

Q. When did Gibbs take actual possession—when did they begin actual drilling on the land?

A. April 24th, 1910.

Q. That well was Gibbs No. 1?

76 A. Yes, sir.

Q. It produced oil in paying quantities?

A. Yes, sir.

Counsel for Defendant offers in Evidence notice of mineral location recorded in Conveyance Book No. 59, page 338, of the Conveyance Records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in Evidence act of lease from J. C. Gibbs to Gulf Refining Company of Louisiana, as recorded in Conveyance Book No. 59, page

295 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Eubanks, you stated that you consulted Counsel with regard to this mineral location, why did you consult Counsel?

A. At the time we wanted to see whether we had the right to make the location—at that time people did not know whether we had a right or not, it was all new, and we wanted to see if it was worth while to make a location.

Q. You and Gibbs made the location, you were jointly interested with him?

A. Yes, sir.

Q. The location was made March 19th, 1910?

A. Yes, sir.

Q. There had been no development work before that time on this tract of land?

A. No, sir.

Q. The well was begun after the location was made?

A. Yes, sir.

Q. You stated that it was begun April 24th, 1910?

A. Yes, sir.

Q. You consulted Messrs. Thigpen and Herold in regard to the location?

77 A. Yes, sir, before we made the location.

Q. How long after the location was made was it that you leased the land to the Gulf Refining Company of Louisiana?

A. April 2nd was the date of the lease.

Q. Was there any arrangement prior to the location as to the leasing of the land, or that the land would be leased to them?

A. No, sir.

Q. You had knowledge did you not of the withdrawal order withdrawing these lands—didn't you consult Counsel with regard to that withdrawal order?

A. We consulted Counsel to see whether we had the right to make the location, and would not be time lost in making it.

Q. You consulted them in regard to the withdrawal order?

A. Yes, sir, I suppose that we did. I do not know that we consulted them though, at the time of making the location.

Q. Did you know of the existence of the withdrawal order of President Roosevelt, dated December 15th, 1908?

A. Yes, sir.

Q. Did that question figure in the consultations with the Attorneys the question of the validity of that withdrawal order?

A. I do not remember exactly, but probably it did.

In suit of United States vs. W. H. Matthews, et al.,  
No. 1168.

S. L. CRONIN, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin, when was work first done on the mineral location here in question, with a view of prosecuting for oil?

A. The Rig No. 1 was built in May or June, 1910.

Q. At what cost?

A. I could not say as to the cost exactly, but my recollection is that it cost two hundred and seventy-five dollars, that is what they cost at that time.

Q. Does your testimony relative to the advice of Counsel, which you received in the case of the United States vs. Mrs. Lydia McMullen, No. 78 1171, also apply in this case?

A. Yes, sir.

Counsel for Defendant offers in Evidence by reference, with leave to substitute a certified copy thereof, notice of mineral location as recorded in Conveyance Book No. 59, page 369 of the records of Caddo Parish, Louisiana.

Counsel for Defendant also offers in Evidence certified copy of lease from W. H. Matthews et al. to E. H. Jennings as recorded in Conveyance Book . . . page . . . of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants also offers in evidence assignment from E. H. Jennings to the Pure Oil Operating Company, as recorded in Conveyance Book No. 66, page 665 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

S. L. CRONIN, a witness for defendants being recalled, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. You have already testified that Mr. E. H. Jennings was the President of the Pure Oil Operating Company, and the leases taken in his name in this state was really for the benefit of that Company?

A. Yes, sir.

Q. At the time the lease was taken by E. H. Jennings, who was in possession of this property?

A. The locators.

Q. Was it fenced?

A. Yes, sir.

Q. What physical signs were present that showed that the land was located?

A. There were notices at every corner on this tract of land.

Q. To what effect?

A. To the effect that it had been located  
79 upon by these locators and the description.

Q. After the lease, did you all take physical possession of the property?

A. Yes, sir.

Q. And built this rig in May or June, 1910?

A. Yes, sir, my recollection is that it was in May.

On Cross Examination he said:

By Mr. Hunter:

Q. How many wells were drilled on this tract of land?

A. We through that we drilled four, but Mr. Neal said that we only drilled three?

Q. What was the name of the first well.

A. Number Two was the first well drilled.

Q. What wells produced oil on this tract of land?

A. Nos. 2, 3, and 4.

Q. The production of oil involved in this controversy came from wells Nos. 2, 3 and 4?

A. Yes, sir.

Q. Any from Wells Nos. 1 and 5?

A. No, sir.

Q. Was well Number one ever drilled?

A. No, sir.

Q. You said that the rig was built in May, 1910?

A. Yes, sir.

Q. What do you mean by the rig?

A. Well, the derrick.

Q. The derrick?

A. Yes, sir, the derrick was built.

Q. That was all that was ever done with regard to well No. 1?

A. Yes, sir.

Q. Simply built the derrick?

A. Yes, sir.

Q. The well was not equipped, it was never drilled?

A. No, sir.

Q. It never produced any oil or gas or anything?

A. No, sir.

80 Q. When was well No. 2 begun?

(Witness examines records)

A. June 20th, 1911, that was when the drilling commenced, and the rig was built prior to that time and the material hauled, that is when they actually began drilling.

Q. When was the rig built and the material hauled for Well No. 2?

A. That well, I could not give it exactly, but it was built, the rig was built in May, I am pretty sure it was in 1911.

Q. So that there was no work done on the well No. 2, of any kind as I understand until May, 1911?

A. No, sir.

Q. And actual drilling was recommended June 20th, 1911?

- A. Yes, sir.
- Q. The well was completed August 4th, 1911?
- A. August 3rd, 1911.
- Q. When was well No. 3 begun?
- A. May 4th, 1912?
- Q. When was well No. 4 begun?
- A. It was begun November 20th, 1913.
- Q. Now No. 1, the rig of which was built in May, 1910, was never completed, no development made under that rig at all?
- A. No, sir, no well was drilled until June, 1911, when we began drilling Well No. 2.
- Q. No. 2 well was the first producing well on the tract?
- A. Yes, sir.
- Q. You stated that the locators were in possession when the Company acquired their rights? What possession did they have?
- A. They had it fenced.
- Q. What kind of a fence?
- A. Wire fence.
- Q. How many acres involved?
- A. Thirty-seven and a fraction.
- Q. What else did they have on it?
- A. They had a man on there in a tent.
- Q. You all went there, the Company went there and put up a derrick but did not do any drilling until 1911?
- A. That is right.

81            On Re-direct Examination he said:

By Mr. Herold:

- Q. Why was not well No. 1 drilled?
- A. Well, we thought that we had a certain amount of work to do there that would hold it for a year, that we

had complied fully with the requirements and was busy with other places around there and we did not go in and drill that land and when we got ready to drill they thought that No. 2 was a better location, and drilled it instead of drilling No. 1.

On Cross Examination he said:

By Mr. Hunter: .

Q. You did not drill Well No. 2 on the same location as No. 1?

A. No, sir.

Q. All you did before July 2nd, 1910, was to build the rig or derrick on this tract of land, did not do any drilling or development work?

A. No, sir, kept a man there like a person would to protect the property, we thought we had a right, and there was some timber there and we did not want the timber destroyed, so we kept a man on there.

Q. That was all that you all did before you began to drill Well No. 2 in 1911?

A. Yes, sir.

Case No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.

C. F. GRIGGS, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Griggs, what was your occupation in the Spring and Summer of 1910?



A. Well, I was working for the Pure Oil Operating Company.

Q. Pure Oil Operating Company?

A. Yes, sir.

Q. Where?

A. On Briar point.

Q. The property involved in this suit, the property known as the Hanszen Mineral location, was  
82 known in the neighborhood there as Briar point?

A. Yes, sir.

Q. You were on the property that is involved in this suit?

A. Yes, sir.

Q. What were you doing there for the Pure Oil Operating Company?

A. I was watching the lease for them, before they started operations and after they started operations then I went to work for them.

Q. At the time that you went on the property was it open, was it cleared land?

A. No, sir, it was not cleared.

Q. What was the condition of the property?

A. It was full of briars, timber and underbrush and we cut it out in there, to get in there as the only way to get into that land on the point was by boat.

Q. Did you all clear a road through the place?

A. Yes, sir.

Q. When did the Woolf Drilling Company begin to haul in material for drilling the Hanszen No. 1?

A. That was some time in June, about June 10th or 11th, because I have a memoranda showing that about June 12th I checked some eight inch pipe, that was the only eight inch pipe they had there, because they did not have any other location there but that.

Q. All of the material to be used in drilling, had to be hauled over the road?

A. Yes, sir, and mighty bad roads at that time, Woolf had trouble getting the boilers in there, I think he was four or five days getting through in there with the boiler.

Q. Heavy boiler?

A. Yes, sir.

Q. Could you say whether or not Woolf was continuously working from the time they begun to haul the material in there until they actually begun drilling?

A. Yes, sir.

Q. They began hauling the material about the 10th of June?

A. Yes, sir, I do not know exactly but they began hauling about the 10th of June and I checked some pipe about the 12th.

Q. All of the material, pipes, boilers, etc.,  
83 for drilling are very heavy?

A. Yes, sir.

Q. And this was a bad road?

A. Yes, sir, took about six days to haul the boiler in there.

Q. From Oil City?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. How far is Briar Point from Oil City?

A. About four miles.

Q. Oil City is on the Kansas City Southern Railway?

A. Yes, sir.

Q. And was at that time?

A. Yes, sir.

Q. Were you on this land constantly?

A. Yes, sir.

Q. You say that the material was hauled June 12th?

A. Yes, sir, about that time.

Q. Do you know when the drilling was begun?

A. No, sir, could not tell the exact date, but the records ought to show that, they have a log of the well and that shows the time they started the well. I do not know the exact date that they started drilling that well.

Q. Was the Woolf Drilling Company drilling any other wells in that neighborhood?

A. No, sir, not at that time. They were later on, drilled some across Stacy's landing, opposite Brian Point, but that was after the Hanszen No. 1 was started.

Q. There had been considerable development in the Caddo field in that section, at that time?

A. Yes, sir.

On Re-Direct Examination he said:

By Mr. Herold:

Q. The development that was then going on in Caddo Parish was on the opposite side of the lake?

A. Yes, sir.

84 Q. The development that Mr. Hunter speaks of was west of the lake?

A. Yes, sir.

Q. That was practically new territory being developed?

Q. What was the condition of these roads?

A. We did not have any roads you might say, they were mighty bad from Oil City on out, but from where they had to turn off to go to Briar point, did not have any roads, had to cut a way through there?

Q. Many swamps in there?

A. Yes sir, all through there.

By Mr. Herold:

These questions are not asked for the purpose of proving the land was swamp land, but is asked to show that it was almost impassable, that it was almost impossible to haul material in there.

Q. Now referring to the instance where it took six days to haul the boiler in there, why was that?

A. It was on account of the bad road, could not get through there hardly with a light load and a boiler is heavy, and in going through the timber the wheels would sink down, the ground was not firm, could not get through very easy?

Q. Would bog up?

A. Yes, sir.

Q. About what will one of these boilers weigh?

A. I do not know exactly what they do weigh.

Q. Very heavy boilers?

A. Yes, sir, very heavy, takes about eight mules to pull one through.

Q. The roads were very boggy?

A. Yes, sir, soft, all of that land in there was pretty soft, as we had to cut out a road, and it was a soft formation, and the wheels would sink down to the hub.

Q. You can testify that the Woolf Drilling Company was continuously at work getting ready to drill from some time in June until they actually begun drilling in July?

A. Yes, sir, had to do that to get the stuff there so that they could drill.

On Re-Cross Examination he said:

By Mr. Hunter:

Q. Referring to the road, was there not a road from Oil City in the direction of Briar Point?

A. Yes, sir, in that direction, to the Ananias Club House, that road has been there quite a number of years.

Q. That road was then in existence?

A. Yes, sir, I think so, I know it was.

Q. What is the distance from that road out to Briar Point?

A. Well, the way that they came it must have been, they came up by the Davis field, from there to Briar Point is about three-quarters of a mile I guess.

Q. Was it necessary to cut a road all the way from the Club House road to Briar point?

A. No, sir, but they had to cut the road, after they got in front of the Vaughn house from there into Briar Point.

Q. Do you know how much was spent in cutting the road?

A. What I mean by cutting the road was that they cut down the underbrush and trees to get by with the boiler. You take now in going over some of these roads they have to cut them out in order to haul a boiler through.

Q. Necessary in all places to clear the road of the timber in order to haul a boiler through?

A. Yes, sir.

Q. That is what you mean by cutting the road?

A. Yes, sir, and on the Briar point that claim was fenced up and we had to cut a road straight through that, cut down the cypress, and clear a place through the woods in order to haul the material in.

Q. Briar Point is situated on Ferry Lake, is it not, the point where the well was drilled?

A. Yes, sir.

Q. Accessable from the lake?

A. Yes, sir.

Q. Could it not have been reached by boat and the material carried there by boat?

86 A. I suppose they could have come in to Plum Point by boat, they landed in there, but the water was pretty shallow back in there in kind of a slough that ran through there.

Q. No material was hauled until some time in June?

A. Yes, sir, about June.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. All the roads in the oil field have been cut up by the hauling of boilers and heavy material?

A. Yes, sir. We hauled a boiler day before yesterday from Stacy's landing to Mooringsport up to the depot and we had trouble with it there, to get through, there were bad roads and it is pretty hard to haul a boiler through there?

Q. Even in dry weather?

A. Yes, sir.

Q. After a rainy spell they have trouble in the oil field in hauling boilers and machinery?

A. Yes, sir, they do.

Q. Counsel asked you about the accessibility of this land by boats was there anyone operating barges or boats in Ferry Lake, as common carriers, for the purpose of handling other people's material?

A. No, sir, not at that time.

Q. The material had to be hauled to the land?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Hunter:

Q. On which side of Ferry Lake is Briar Point, where Well No. 1 was drilled, west or east?

A. Well, Ferry Lake kind of runs, kind of on the North East side of Ferry Lake, if I understand it right, Ferry Lake comes in back of the Club house, to the mouth of James Bayou, and this was on James Bayou.

Q. This well was not the first well drilled in that territory?

A. I think that it was, that I know anything about, right on that side of the lake.

Q. That is down there?

A. Yes, sir.

Q. Where was the main development of the  
87 oil field at that time? Near Mooringsport or Oil City?

A. At that time, not very much except Burr No. 1.

Q. How far was that from the Hanszen well?

A. Across the lake over there west of there, away over there.

On Re-Direct Examination he said:

By Mr. Herold:

Q. The Burr well was in Texas?

A. Yes, sir, Burr No. 1 was about the only well drilled around there that I know anything about.

On Re-Cross Examination he said:

By Mr. Hunter:

Q. Considerable development at Mooringsport at that time?

A. Yes, sir, the Hostetter well, was drilled in before that.

Q. The Caddo Oil fields come in about 1908?

A. Yes, sir.

Q. This well is in the Caddo field, not very far from Mooringsport five or six miles?

A. Yes, sir, five or six miles.

H. A. MALET, a witness for the Defendants, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. You are superintendent of the Gulf Refining Company of Louisiana?

A. Yes, sir.

Q. You have been in the oil business a good many years?

A. Yes, sir.

Q. What is the weight of boilers used in drilling operations?

A. About ten thousand pounds.

Q. About what is the weight of a drilling rig and appliances connected with drilling rigs?

A. We usually when we ship, order a car of a hundred thousand pounds.

Q. The rig and tools weigh about a hundred thousand pounds?

A. Yes, sir, approximately.

Q. What is the weight of the pipe in a well,  
88 say twenty-three hundred feet, say of six inch and eight inch?

A. The six inch weighs about 1934 pounds and the eight inch pipe we use, weighs I think twenty-five pounds per foot and the ten inch, thirty-five pounds per foot.

Q. Weighs that per foot in length?

A. Yes, sir.



Q. In a well twenty-three hundred feet in depth, there is twenty-three hundred feet of six inch casing?

A. We, in the Caddo field usually set on an average about 2250 feet of six inch casing.

Q. And about how much of the eight inch?

A. Approximately eight hundred and fifty feet?

Q. How much of the ten inch?

A. About two hundred feet.

Q. In hauling drilling rigs over the roads in the Caddo field, is there much delay ordinarily involved?

A. Yes, sir, I would say a good deal, from three to ten days.

Q. In hauling?

A. Yes, sir.

Q. In the present field?

A. Yes, sir.

Q. Eight years ago, when the field was still new, the roads had to be cut out, were conditions better or worse then?

A. Much worse than now, have established roads now through the field.

The taking of testimony was adjourned until tomorrow morning at ten o'clock.

June 13th, 1918, all parties being present the taking of testimony was resumed.

W. C. WOOLF, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Woolf, in 1910, you were President and Manager of the Woolf Drilling Company?

A. Yes, sir

89 Q. Did the Woolf Drilling Company have a contract to drill a well on the Hanszen Mineral location, Hanszen No. 1?

A. Yes, sir.

Q. Your Company drilled that well?

A. Yes, sir.

Q. About how long were you, after the date of the contract in beginning to drill that well?

A. Between twenty and thirty days?

Q. During that twenty or thirty days, in which you were getting ready to drill what were you doing towards drilling the well?

A. Arranging and getting ready to drill, had to order the supplies and had to haul them out.

Q. Was there any delay that was avoidable in your work of preparing to drill this well?

A. No, sir.

Q. What caused the delay of twenty or thirty days?

A. Up to that time, 1910, we had no supply houses in Shreveport to amount to anything, and most of our material had to be shipped from Beaumont, Texas, in fact we bought a new outfit, new machinery and pipe and the drilling machinery for that well and it had to be shipped from Beaumont.

Q. What about the roads?

A. They were very bad and we had to do considerable work to get the roads in shape so that we could get out there.

Q. During the days that elapsed from the date of the contract to the date that you began actual drilling of the well, you were hauling material on the property and doing other things that were necessary for the drilling of the well?

A. Yes, sir.

Q. Was your contract written or verbal?

A. It was a verbal contract.

1c  
No cross examination.

90           No. 1156, United States vs. Henry Hunsicker,  
                  et al.

HENRY HUNSICKER, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Hunsicker, you are a resident of Caddo Parish, Louisiana?

A. Yes, sir.

Q. You have lived here a number of years?

A. Yes, sir.

Q. What position do you now occupy?

A. Treasurer of the State of Louisiana.

Q. Are you a Member of the Bar of this Court?

A. I am a Member of the Bar. I do not know whether I was ever admitted in this Court or not.

Q. You have been a member of the bar how long?

A. Since 1900.

Q. Are you the Henry Hunsicker who made location that is in contest in this case now before the Court?

A. Yes, sir.

Q. Before making that location, did you consult any other Member of the Bar here, as to your right to make same?

A. I did.

Q. With whom?

A. With yourself.

Q. What were you advised?

A. That the withdrawal order of Mr. Roosevelt did not apply to mineral locations.

Q. Further than that, what as to the Power of the President to withdraw the lands?

A. That he did not have the right, without Congressional authority.

Q. What authority did you receive from Counsel as to the Power of the President to withdraw without Congressional authority?

A. That he did not have any right.

Q. Was this advice received by you before making your location?

A. It was.

Q. You proceeded thereafter and located on the land?

A. Yes, sir.

Q. Under your location was oil or gas discovered in paying quantities?

A. Yes, sir, gas was discovered prior to the withdrawal order of Mr. Taft.

Q. Gas was discovered before the withdrawal order of Mr. Taft?

A. Yes, sir.

Q. Who drilled the well?

A. The Producers Oil Company.

Q. Under what kind of an arrangement?

A. I was to receive a certain per centage of the production.

Q. Under a sale or a lease?

A. Lease.

Q. You leased your rights as Locator to the Producers Oil Company?

A. Yes, sir.

Q. The Producers Oil Company produced gas in paying quantities before the Taft withdrawal order?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. Referring to the well which you say produced gas, that was drilled after the date of your location, March, 1910?

A. Yes, sir, drilled April 10th, I think.

Q. It was not drilled before the withdrawal order of 1908?

A. No, sir.

Q. There had been no development of any kind before that time?

A. No, sir.

Q. You knew of the existence of the withdrawal order of December 15th, 1908, referred to by you in your testimony as the Roosevelt withdrawal order?

A. Yes, sir.

Q. You stated that you consulted Mr. Herold in regard to that?

A. Yes, sir.

Q. What was the principal reason assigned by Mr. Herold, as to the alleged illegality of the order?

A. He did not think that the withdrawal order of Mr. Roosevelt had any legal sanction, had no Congressional authority, and furthermore the withdrawal order merely withdrew from Homestead Entry would not  
92 effect mineral locations.

Q. Have you read the withdrawal order of December 15th, 1908?

A. I do not recall it, but I did have it.

Q. Now referring to the gas well that you mention, I will ask you to state whether or not any gas was produced and sold from that well?

A. That I could not say.

Q. You do not know about that?

A. No, sir.

Q. All you know is that there was a gas well there?

A. Yes, sir, came in as a blow out.

Q. Mr. Hunsicker, I will ask you to state whether or not you have the original of a letter, of which I now show you a copy of date June 1st, 1911, signed by S. B. Proist, Assistant Commissioner of the General Land Office, addressed to Hon. Murphy J. Foster?

A. I think so.

Q. Will you please read the letter and state whether that is a copy of the original?

(Witness examines same.)

A. Yes, sir, and that was in answer to a telegram addressed to Sen. Foster by me in reference to the discovery of the well.

Q. The letter I show you is marked on the Bank Plaintiff "A"?

A. Yes, sir.

Q. You identify that as a correct copy of the original?

A. Yes, sir, that was written after the well was drilled.

Counsel for Plaintiff, at this time and in connection with the Cross Examination of the witness offers the letter referred to in Evidence.

Filed in Evidence and marked Exhibit "A."

Q. When was work on the first well begun?

A. As well as I recall it was in April.

Q. April?

A. Yes, sir.

Q. 1910?

A. Yes, sir, shortly after the location.

93 Q. I will ask you to state whether or not the first well drilled was abandoned and the pipe withdrawn?

A. No, sir, was a blow out and was never able to kill it.

Q. What became of the pipe that was in there?

A. Still in there, about fifteen hundred feet of drill stem blew out and eighteen hundred feet lost, and the last I heard of it there was about a thousand feet of the drill stem still in that hole.

Q. Were other wells drilled on the land involved in this suit?

A. Yes, sir, I think two more.

Q. Do you remember when they were drilled?

A. Shortly afterwards, I do not recall the date.

Q. You do not remember the date?

A. No, sir.

Q. The wells referred to are known as Hunsicker Nos. 1 and 2?

A. Yes, sir.

Q. They are situated on the land on which you made your mineral location?

A. Yes, sir.

C. P. CLAYTON, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Storey:

Q. Mr. Clayton, what is your business?

A. I am General Superintendent of The Texas Company?

Q. Did you have charge of the drilling of Wells Nos. 1 and 2 on the Hunsicker land, that is in controversy in this case?

A. Number One was commenced May 8th, 1910, and I did not take charge of this District until July, 1910, but we did not complete this well until along sometime in March, 1911, so from July on I had charge of the well.

Q. What became of that well, was it a producer?

A. No, sir, gas well, and we tried to kill it?

Q. Did it show any gas?

A. Yes, sir, very heavy gas pressure.

94 Q. Now when was No. 2 started?

A. We started to work on Number Two March 19th, and started drilling April 1st, 1911, and it was completed May 20th, 1911.

Q. That well was a producer?

A. It was a Producer to start, produced Two hundred barrels.

Q. Is it producing anything now?

A. I think not.

Q. Can you state if there was a gas showing in Number One, before July 1st, 1910?

A. I could not say positively, only from the reports, the reports showed that they were trying to kill the well July, 1910. I came here on the 8th or 9th, and at that time the well had blowed out, and they were trying to kill it and had been for about a month.

Q. Was the well producing gas then in commercial quantities?

A. Yes, sir.

Q. Killed it and tried to make an oil well?

A. Yes, sir.

Q. But they had actually found gas in paying quantities?



A. Yes sir, the pipe stuck in the well.

Q. Is the pipe in that well, does it still remain in the ground?

A. I am not positive, but I think that it is.

Q. Can you pull that well now?

A. Yes, sir.

Q. What would be the effect?

A. I have an idea that the gas is entirely gone from that part of the Caddo field.

On Cross Examination he said:—

By Mr. Hunter:—

Q. You did not appear until July 1910?

A. Yes sir, I taken charge about the 8th or 9th of July 1910.

Q. You are not familiar, of your own knowledge with the well until that time?

A. No, sir, I was not.

Q. Referring to Well No. 1, was there any gas sold from that well or used?

A. There was gas used for firing the boilers on the Hunsicker lease.

95 Q. No gas sold?

A. Not according to my recollection, in fact the Company tried to kill the well.

Q. Tried to kill the well for the purpose of drilling it deeper for oil?

A. Yes, sir.

Q. Wanted to get oil?

A. Yes, sir.

Q. Did they succeed in killing the well?

A. Finally succeeded in closing it, and used the gas for drilling on the property.

Q. The well has since been abandoned?

A. Yes, sir.

Q. It never did produce oil?

A. No, sir, never produced oil.

On Re-Direct Examination he said:—

By Mr. Storey:—

Q. Your records show when this well commenced as a gaser?

A. I am not positive whether they do or not.

Q. I will ask you to look for the records and have Mr. Adams to come and testify.

On Re-Cross Examination he said:—

By Mr. Hunter:—

Q. I understand you to say Well No. 1 was not completed until July 1911?

A. We done quite a lot of work on it trying to kill it, taken the crew off I think March 8th, 1911. We kept a crew there trying to kill the well, lubricating we called it.

Q. Well No. 2 from which the oil was extracted is situated on the land involved in this suit?

A. Yes, sir, that is my understanding.

96           Evidence on behalf of the Standard Oil Company of Louisiana, one of the co-defendants in suit No. 1158, entitled United States vs. W. W. Green, et al.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 12,584.22 barrels of oil of the value of \$11,042.51, as stated in answer to the nineteenth interrogatory propounded by the plaintiff to this defendant.

This is all of the oil that has been bought or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the interrogatories represents the correct amount taken and the value thereof, and also indicates the payments to the respective parties. The Company still has \$690.10 in its treasury held for the account of W. W. Green, which represents a 1-16 royalty interest in the amount of oil purchased from the property in dispute.

The Standard Oil Company of Louisiana did not operate this property, but bought the oil from the operators and the respective royalty claimants. No oil has been taken from the property by this defendant since the date of the rendition of the statement annexed to the answers to the interrogatories.

Evidence in behalf of the Standard Oil Company of Louisiana one of the co-defendants, in suit No. 1168, United States vs. W. H. Matthews, et als.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 68,592.38 barrels of oil of the value of \$65,786.95, as shown by statement annexed to the answer to interrogatory fifteenth. This statement indicated the number of barrels of oil bought from the property in dispute from the 27th day of February 1912, date of first run, to August 1, 1917. Since that date the Company has taken 2,490.28 barrels of oil of the value of \$4,987.89, as shown by additional statement which is hereto annexed. The total amount  
 97 of the oil taken up to April 1, 1918, would represent 71,082.66 barrels, of the value of \$70,-  
 774.84. This represents all of the oil that has been bought

or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the answers to the interrogatories was made up to August 1, 1917, and the additions thereto are given so as to include all of the oil run up to April 1, 1918.

The Standard Oil Company of Louisiana did not operate this property but bought the oil from the operators and respective royalty claimants. The statement will show the amount paid both to the operators and to the respective royalty claimants.

The statement referred to is offered in Evidence and marked Defendant Standard Oil Company of La. No. 1.

Evidence on behalf of the Standard Oil Company of Louisiana, one of the co-defendants in suit entitled United States of America vs. Mrs. Lydia Hanszen McMullen, et al, No. 1171.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 168,066.94 barrels of oil of the value of \$156,251.33, as shown by statement annexed to its answers to interrogatories propounded to it by the plaintiff. Since the rendition of the statement annexed to its answers to the interrogatories, which represents the oil run from February 27, 1912, date of first run, to August 1, 1917, this Company has bought from the same property 4,046.96 barrels of oil of the value of \$8,093.36, as shown by additional statement indicating the oil bought up to April 1, 1918, which is annexed hereto, and is to be considered in ascertaining the number of barrels run from the property and the money value thereof. This represents all of the oil that has been bought from the property in dispute in this case by the

98        Standard Oil Company of Louisiana. The Standard Oil Company of Louisiana did not operate this property but bought the oil from the operators and the respective royalty claimants. The statements will show the amount paid to both the operators and the respective royalty claimants, as well as the amount withheld on account of this litigation.

The account may be restated as follows: Total barrels bought, 172,113.90, of the value of \$164,344.69.

I understand that there were a number of wells drilled on this property and that only two of them are in dispute. The Company took this oil from tanks located on the property, but it has no information as to what particular wells the oil was taken from, but makes the foregoing statement of the total production received by it, leaving the wells from which the oil was taken to be determined between the plaintiff and the operators.

It is admitted by the Government, Plaintiff, that the statement herein made by Judge Pugh, as shown by both the statement rendered and annexed to the interrogatories and the statement attached thereto, represents the correct amount and value of the oil bought by the Standard Oil Company of Louisiana, from the lease from which the oil was taken.

Statement referred to as annexed is offered in Evidence and marked Defendant Standard Oil Co. No. 2.

Defendants rest.

JAMES W. NEAL, being recalled on behalf of Plaintiff in suit of United States vs. Arkansas Natural Gas Company, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Mr. Neal, referring to suit No. 1159 United States vs Arkansas Natural Gas Company, and the statement offered in Evidence and marked exhibit I, I will ask you to state the circumstances under which the statement was prepared, and who assisted you in making the statement?

A. The statement was prepared, as to the production shown on it by the office force and Mr. C. J. Cowles, who has charge of the Office of the Arkansas Natural Gas Company at Little Rock, Arkansas, which is its general office. I interviewed Mr. Cowles in connection with the production in this case and Mr. Cowles stated that the statement which is annexed to the interrogatories in this case were made by him in haste, and that the amount of gas as shown by the Arkansas Natural Gas Company in its answer to the sixth interrogatory 3,855,164.00 cubic feet was the gas sold by the Company for domestic purposes. We checked over the records and found that amount to be correct. We also found that the Company had sold 889,674.00 cubic feet of gas for commercial purposes, that amount was added to the amount of gas showed in the statement annexed to the Sixth interrogatory which totals 4,744,838,000 cubic feet of gas. This gas was sold on a basis of eight ounces. Mr. Cowles also checked over the records of the Company as to the amount of gas purchased by that Company between July 1st, 1911, and June 30th, 1912 and found that 2,395,993,000 cubic feet of gas at ten pounds pressure had been bought, instead of 2,240,990,-

000, cubic feet as shown in the answer to interrogatory No. 6. That amount was entered on the statement. The question of reducing that gas that was bought on the ten ounce basis to the eight ounce basis was considered. The total gas sold by the Company was 4,744,838,000 cubic feet was measured by the eight ounce base and had been subjected to the waste incident to running the gas through the pipe line of the Company from the field to pipe line of the marketing station. Mr. Cowles and myself considered that gas bought at ten pound pressure at the mouth of the well in the field would be equal to the same amount of gas at the marketing station on the eight ounce basis after deducting the waste incident to carrying the gas to the marketing station. We therefore deducted the amount of gas bought by the Company, on the ten pound basis from the total amount of gas sold by the Court, which left 2,348,845,000 cubic feet of gas at the eight ounce pressure as being the production from the five wells which were not metered, but which were run into the pipe line with the gas purchased by the Company, and allowed each well an equal distribution of this gas we found the well in suit should be credited with 469,769,000 cubic feet of gas at 8 ounce basis, concluding that the ten ounce

pressure in the field was equal to the same  
 100 amount of gas at the eight ounce pressure at the marketing station we have the same amount of 4,69769,000 cubic feet of gas at the ten pounds pressure at the mouth of the well. This statement is figured exactly as the defendants have figured the production in their answers to the interrogatories, the only difference being the addition of the 889,674,000 cubic feet of commercial gas that was omitted from his statement.

In checking the counter claim we found that the records showed as is shown on page 2, which is copied from the records of the Arkansas Natural Gas Company

as to the cost of drilling and equipping the well was \$1,842.12 instead of the amount shown in the answer to interrogatory No. 11 of the defendant.

Q. Now Mr. Neal, after the answers to the interrogatories were filed, did you go to Little Rock, the home office of the Arkansas Natural Gas Company for the purpose of checking over the records of that Company with regard to the production?

A. Yes, sir.

Q. You had an interview with Mr. Cowles who was in charge of the office?

A. Yes, sir.

Q. Did Mr. Cowles furnish you the data upon which the statement filed in evidence and marked exhibit "I" was based?

A. Mr. Cowles furnished me the information and made the figures and I checked the figures to see that the multiplication and the divisions were correct.

Q. I will ask you to state then whether or not the figures shown on Plaintiff's Exhibit "I" are the figures furnished you by Mr. Cowles which you checked?

A. They are.

Q. Did you and Mr. Cowles agree upon this statement?

A. Yes, sir.

Q. As I understand it the Arkansas Natural Gas Company, in their answer to the interrogatories in this case followed the same general plan of figuring as you followed in this case?

A. Yes, sir, exactly the same plan.

Q. In the answers to the interrogatories, however, no account was made for the commercial gas sold by the Company, was there?

101 A. No, sir.



Q. According to the methods of figuring adopted by the Company what is the difference between the commercial gas sold and the domestic gas sold?

A. The domestic gas is gas that was sold by the Company to private individuals for use in their homes and stores and such things as that, and the Commercial gas is gas that was sold by the Company to Manufacturers. There is a difference in the rates between the commercial gas and the domestic gas, as the commercial gas is sold at ten cents per thousand cubic feet while the domestic gas is sold to the public at Thirty cents to forty cents per thousand cubic feet.

Q. So that the gas taken from this well was transported with gas from other wells by means of the pipe line from the land to Little Rock and other stations along the line?

A. It was.

Q. Did the Arkansas Natural Gas Company sell gas at other points between the field and Little Rock?

A. Yes, sir.

Q. At what other points between the field and Little Rock?

A. Well, the Arkansas Natural Gas Company sold gas at nearly all the small stations along the railroad between the field and Little Rock, also sold gas to Pine Bluff.

Q. It received, according to your examination of the records, ten cents per thousand cubic feet?

Counsel for Defendants objects to any testimony as to the selling price of gas, as irrelevant.

Counsel for Plaintiff states that the evidence adduced relative to the price at which gas was sold by the Arkansas Natural Gas Company, is not for the purpose of vary-

ing, or altering the amount shown by the Statement offered in evidence by Plaintiff and marked exhibit "I".

Q. Now Mr. Neal, referring to your statement marked Plaintiff "I" I will ask you to explain the difference between the gas figured on the ten ounce basis and that figured on the 8 ounce base, and what is meant by those terms.

102 A. It is my understanding that gas on the ten pound basis is equivalent to an increase of practically sixty two and a half per cent when reduced to gas at eight ounce basis. There is a difference in the measurement and in the construction of the meters, but I am not expert along that line of meters.

Q. The gas purchased by the Company in the field was purchased on the land and run through meters at ten pound pressure as I understand it, took that much pressure to the square inch?

A. Yes, sir.

Q. Whereas the gas sold by the Company was sold through meters that took eight ounce pressure to run the meter?

A. Yes, sir, that is my understanding.

Q. Now what are the changes on this statement, making it different from the account made out by the defendant in its answer to the interrogatories?

A. The statement simply adds the value of the commercial gas that was sold by the Company to the amount of domestic gas which is accounted for in the interrogatories. The statement also shows a difference in the cost of drilling and equipping the well which is shown on page two of the statement. Page two is an itemized statement of the cost of drilling and equipping that well in suit as shown by the records of the Arkansas Natural Gas Company.

Q. Mr. Cowles told you that the answers to the interrogatories were hastily prepared?

A. Yes, sir.

Q. Did he furnish you all the figures, both for the production and also on the counter claim?

A. He did.

Q. And he agreed with you upon the statement?

A. Yes, sir, agreed with me as to the statement of production and the amount.

103 I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken on the trial above numbered and entitled causes.

R. B. COOK,  
Stenographer.

104 Plaintiff C.

DMG-"FS" 4-207.

Department of the Interior,  
"B" General Land Office,  
CRGO. Washington, D. C., November 24, 1917.

I hereby certify that the annexed copy of telegram dated December 15, 1908, is a true and literal exemplification from the copy of said telegram on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) D. K. PARROTT,  
Acting Assistant Commissioner  
of the General Land Office.

"A"  
ECF  
ECF

DMG-3C.  
Department of the Interior,  
General Land Office,  
Washington, D. C., December 15, 1908.

Telegram

Copy.

Register and Receiver,  
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three north, inclusive, of ranges ten to sixteen West, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry, and appropriation.

DENNETT,

RPF.

Commissioner.

Official Business—Government Rate.

Filed Feb. 28, 1918.

105

4-207.

DMG-FS  
"B"  
CRGO.

Department of the Interior,  
General Land Office,  
Washington, D. C., Nov. 10, 1918.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

Testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,

(Seal)

Acting Assistant Commissioner  
of the General Land Office.

5496

Department of the Interior,

A D.

General Land Office, dm-g-3fs file.

Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land Office.

Register and Receiver,  
Natchitoches,  
Louisiana.

See, also 1910-44655.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,

FRED DENNETT,

Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,

Secretary.

LRS.

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Plaintiff D.

DMG-"FS"      Department of the Interior,  
 "B"              General Land Office,  
 CRGO.           Washington, D. C., December 15, 1908.

I hereby certify that the annexed copy of office letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal)              D. K. PARROTT,  
                          Acting Assistant Commissioner  
                          of the General Land Office.

"A"              Department of the Interior,  
 ECF              General Land Office,  
 ECF              Washington, D. C., December 15, 1908.

Register and Receiver,  
 Natchitoches, Louisiana.

Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secretary from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal and any applications, selections, or entries based thereupon must be rejected by you subject to appeal.

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very Respectfully,

FRED DENNETT,  
Commissioner.

Filed Feb. 28, 1918.

1172

1-480.

107

Plaintiff F, 3, 4 & 5.  
United States of America,  
Department of the Interior,

Washington, D. C., November 16, 1917.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true and exact copies of the originals as they appear of the records and files of this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

A. G. HOPKINS,

(Seal) Assistant Secretary of the Interior.

DMG-K 1.

(Stamps) Div'n Mails & Files, received Oct. 26, 1908.  
Office of the Secretary, received Oct. 26, 1908.

Department of the Interior.

Division of Mails & Files. Received Nov. 5, 1908, to  
Genl. Land Office, Dept. of the Interior.

Department of the Interior.

United States Geological Survey.

Washington, October 24, 1908.

Office of the Director.

The Honorable,

The Secretary of the Interior.

Sir:—

I desire to bring to your attention an extreme case of the waste of mineral resources of the United States, in the hope that the legal officers of the Department may be able to suggest some method of conservation. The Chief Geologist of the Survey, C. W. Hayes, recently visited the Caddo oil field in Louisiana, in company with David

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T. Day, who is in charge of the Survey's investigation into the subject of oil production. The Chief Geologist's report is as follows:



## DMG-K 2.

This field is located about twenty-five miles northwest of Shreveport, Louisiana, in Caddo Parish. The field, as at present, outlined by the preliminary well drilling, is very narrow and extends for some ten miles in a northwest and southeast direction. There is every indication of further extension of the field to the north and southeast. In fact, no definite limitations have as yet been determined for the field, and it may be safely assumed from present conditions that it is likely to be of much greater extent.

This field has only lately come into prominence as a producer of petroleum, but for several years has given every evidence of very great natural gas pressure, and several gas wells have been connected by pipe lines, first with Shreveport and later with Texarkana, by six and eight inch pipe lines respectively.

Some four year ago one of the natural gas wells in this field began to leak badly around the casing due to poor work in packing the well above the gas-bearing sand. This leakage rapidly increased so that the well soon "blew out", that is, the pressure of the gas blew the pipe out of the ground and tore away the surrounding earth, and the pipe, derrick, drilling apparatus, etc. all fell into the well and were submerged by water which blew out with the gas. The gas, under heavy pressure, continued blowing out from this well for about four years. It was gradually drowned by salt water, and eventually the escape of gas ceased. This blowing out from indifferent work in packing the wells has been repeated in three other cases, and at the present time the gas is boiling up so rapidly around the casing of a fifth well that another "blow out" can be expected within a short time. In one well a crater about three hundred feet in diameter has

been formed, which is usually about half filled with water or thin mud containing some petroleum. In the middle of this the gas boils up making a large mud volcano, and periodically the entire crater fills with oil and water overflowing into Caddo Lake.

It is absolutely impossible to measure the waste of gas from this well which has been in progress about ten years; but it has been estimated by various persons familiar with gas wells at fifteen million cubic feet in twenty-four hours. Still greater waste of this valuable natural fuel is going on at a dry well about a mile due west of the well noted above. Here the gas is burning with a flame varying from seventy to one hundred feet in height, and the waste is evidently greater than in any other well in the field. In both of these wells enough of the casing remains in place to prevent the caving of the sides which might in time check or entirely stop, the flow of gas. The total waste in this only partially developed field has been estimated as more than one twentieth of the total amount of natural gas usefully consumed in the entire United States.

No effort is being made to control these wells, and there is no record in the history of the United States of such wanton waste with absolutely no effort to check it.

The engineering problem of putting down a series of wells within two hundred feet of these burning wells is extremely simple, and it could be confidently expected that such wells, properly drilled, would draw off the gas and so reduce the pressure until the blown out wells could be controlled and safely filled in. No such attempt is being made because the oil men have the fanciful belief that

after the gas has blown off the production of oil will be improved—an idea for which there is no justification, as this rapid escape of gas rather injures the oil chances of the field by permitting an influx of salt water as the gas pressure is removed. The apparent real reason for this profligate waste is that there is no immediate use for the gas beyond that supplied now for Shreveport and Texarkana, and the sensational exhibition of this burning gas at night is a spectacle which will advertise the field to those passing through on trains.

An investigation of this oil field in cooperation with the Geological Survey of Louisiana is now in progress and additional information concerning it will be available in a short time.

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DMG-K 4.

It has been suggested that if any Federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste. It is evident that engineering difficulties of considerable magnitude are involved, but the geologists of the Survey believe that the operators will be able to control the gas if a serious endeavor is made.

Very respectfully,

GEO. OTIS SMITH,  
Director.

D

DMG-K 5.

5496

Department of the Interior,  
United States Geological Survey,

Washington, November 6, 1908.

Office of the Director.

The Honorable,  
The Secretary of the Interior.

Sir:—

In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 14 North, Range 10 West:  
N  $\frac{1}{4}$  NE  $\frac{1}{4}$ , Sec. 14; N  $\frac{1}{2}$  NW $\frac{1}{4}$ , Sec. 34.

Township 15 North, Range 10 West:  
Lots 6 and 10 of Sec. 8, area 8.20 acres.

Township 17 North, Range 10 West:  
Secs. 26 and 35, in Lake Bisteneau.

Township 18 North, Range 10 West:

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DMG-K 5.

S  $\frac{1}{2}$  SE  $\frac{1}{2}$ , Sec. 26.

Township 19 North, Range 10 West:

W  $\frac{1}{2}$  NE $\frac{1}{4}$ , Sec. 30.

Township 21 North, Range 10 West:

NW  $\frac{1}{4}$  NE $\frac{1}{4}$ , SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 25.

Township 19 North, Range 12 West:

All Sec. 28 except lot in SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , 30.27 acres, old bed of Lake Bodeau.

Township 15 North, Range 14 West:

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ . NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ . Sec. 12.

Township 16 North, Range 14 West:

NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ . Sec. 24.

Township 20 North, Range 14 West:

SE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Sec. 8.

Township 15 North, Range 15 West:

NW  $\frac{1}{4}$ , Sec. 6.

Township 17 North, Range 15 West:

NW  $\frac{1}{4}$  Sec. 5, E  $\frac{1}{2}$  NE  $\frac{1}{4}$ , Sec. 6.

Township 18 North, Range 15 West:

E  $\frac{1}{2}$  SE  $\frac{1}{4}$ , Sec. 14.

Township 19 North, Range 15 West:

NE  $\frac{1}{4}$  Sec. 14, SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  Sec. 26.

Township 15 North, Range 16 West:

SW  $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 2; W  $\frac{1}{2}$  NE  $\frac{1}{4}$  & SW  $\frac{1}{4}$  Sec. 18;  
SW $\frac{1}{4}$  Sec 19.

Township 16 North, Range 16 West:

W  $\frac{1}{2}$  NE  $\frac{1}{4}$  & SW  $\frac{1}{4}$ , Sec. 19; NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 24;  
W  $\frac{1}{2}$  Sec. 30; W  $\frac{1}{2}$  Sec. 31.

Township 17 North, Range 16 West:

S  $\frac{1}{2}$ , Sec. 6; Lot 2 (34.39 acres) Sec. 30.

Township 18 North, Range 16 West:

SW  $\frac{1}{4}$ , Sec. 6; NW  $\frac{1}{4}$ , Sec. 7; NW  $\frac{1}{4}$  E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ,  
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Sec. 13; W  $\frac{1}{2}$  SW  $\frac{1}{4}$  & SE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Sec.  
28; SW  $\frac{1}{4}$ , Sec. 30; E  $\frac{1}{2}$  NW  $\frac{1}{4}$  Sec. 36.

Township 19 North, Range 16 West:

SW  $\frac{1}{4}$ , Sec. 7; SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  & W  $\frac{1}{2}$ , Sec. 8; SW  $\frac{1}{4}$   
Sec. 30.

Township 20 North, Range 16 West:

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DMG-K 7.

NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 1; SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Sec. 3 (For S  $\frac{1}{2}$   
SW  $\frac{1}{4}$ , Sec. 3, see "C", Aug. 24, 1905).

Among these lands, that located at Township 20 North,  
Range 16 West, and comprising the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  Sec. 1,  
as well as SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Sec. 3, are clearly within the  
known productive area of this oil and gas field. The  
waste of natural gas referred to in my previous letter  
on this subject constitutes an evident drain upon the  
mineral resources of the public domain. If permitted  
to continue it will inevitably destroy the mineral value

of this public land, and render it worthless in a comparatively short time.

If the Government, by reason of these holdings, can ask for an injunction against further drilling for oil or gas within the area of the Caddo field until effective measures are taken both to stop the present waste of gas and to insure wells now being drilled against similar "blowing out," I would recommend that this action be taken. Whether such an injunction is not possible, the determination of the conditions necessary for the protection of the Government and other property in this vicinity might well be entrusted to a commission to consist of a member of the Geological Survey, a member of the General Land Office and the State Geologist of Louisiana.

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, Director.

Filed Feb. 28, 1918.

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Department of the Interior,  
United States Geological Survey,  
Washington.

July 1, 1910.

Office of the Director.

The Honorable,  
The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

ORDER OF WITHDRAWAL.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of withdrawal heretofore made on December 15, 1908, insofar as the same includes any of the lands hereinafter described, be, and the same is hereby ratified, confirmed and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 23, 1910, there is hereby withdrawn from settlement, location, sale or entry, and reserved for classification and



in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to-wit:

Louisiana Principal Meridian, Louisiana.

- T. 17 N., R. 10 W., all of township.
- T. 18 N., R. 10 W., all of township.
- T. 18 N., Rs. 14 to 16 W.
- T. 19 N., Rs. 14 to 16 W.
- T. 20 N., Rs. 14 to 16 W.
- T. 21 N., Rs. 14 to 16 W.
- T. 22 N., R. 15 W., all of township.
- T. 22 N., R. 16 W., all of township.
- T. 23 N., R. 15 W., all of township.
- T. 23 N., R. 16 W., all of township.

Respectfully,

GEO. OTIS SMITH, Director

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER, Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT, President.

Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,

Acting Secretary.

DMC.

Filed in Evidence Apr 7, 1919.

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No. 1172, PLFF "M."

R. B. Cook, Stenographer.

Suit No. 1172.

U. S. vs. Sam W. Mason, et al.

Statement of the Oil Run by the Gulf Refining Co. of  
La. from Land in Suit from May, 1910, to December  
31, 1917, Division of Oil and Values.

	Bbls.	Value.
Total oil run to Dec. 31, 1917 ....	94,004.43	\$67,732.94

## Division of Oil and Values.

R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen .....	7,041.08	3,708.30
E. Hanszen .....	941.87	952.44
D. P. Eubank .....	1,883.71	1,905.00
Sam W. Mason .....	1,883.71	1,905.00
R. L. Stringfellow .....	2,346.74	1,776.54
J. B. Stokley .....	1,173.34	888.27

Total royalty paid by and due from the Gulf Refining Co. of La. ..	\$11,294.20
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Total value of oil retained by the Gulf Refining Co. of La. as its share from this lease .....	\$56,438.74
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Pipe Line earnings on oil run ....	8,367.97
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Total received by the Gulf Refing. Co. of La. for the oil in this suit as its share .....	\$64,806.71
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Cost of drilling and equipping the well and cost of operating same to Dec. 31, 1917 .....	<u>\$34,067.13</u>
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Net profit to the Gulf Refining Co. of La. to December 31, 1917, all royalty and expenses having been deducted .....	\$30,739.58
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The first work was done on this lease on April 16, 1910,  
the date of the beginning of drilling of the well in the  
suit.

Filed Jan. 21, 1919.

# 115 Gulf Refining Company of Louisiana.

Statement Showing Pipe Line Runs from Mason Mineral  
No. 1 from May, 1910, through Dec., 1917.

	Barrels	Price	Amount
1910			
May	750.00	40c.	300.00
June	8,769.04	40	3,507.62
July	5,159.48	38	1,960.60
August	4,309.96	40	1,723.98
September	3,277.11	40	1,310.84
October	3,297.75	40	1,319.10
November	2,735.82	41.34	1,130.99
December	2,526.49	42	1,061.55
	<u>30,826.65</u>		<u>12,314.68</u>
1911			
January	2,054.34	44	903.91
February	1,760.13	44	774.46

March	1,558.95	47.77	744.71
April	1,755.52	50	877.76
May	1,667.37	55	917.05
June	1,638.16	58.24	954.00
July	1,679.54	60	1,007.72
August	1,484.71	60	890.83
September	1,429.78	61.23	875.45
October	1,475.61	62	914.87
November	1,462.83	62	906.95
December	1,280.16	62	793.70

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19,247.10

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10,561.47

1912			
January	1,089.37	66.60	725.52
February	759.34	71.25	541.03
March	375.57	72	270.41
April	715.96	73.52	526.37
May	1,026.68	76	780.28
June	890.77	77	685.89
July	982.21	79	775.95
August	971.96	80	777.57
September	840.77	80	672.62
October	895.00	80	716.00
November	981.05	82.90	813.29
December	942.27	88.58	834.66

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10,470.95

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8,119.59

1913			
January	671.29	93	624.30
February	649.95	98	636.95
March	903.58	98	885.51
April	685.31	98	671.60
May	742.17	98	727.33

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June	849.75	98	832.76
July	876.88	99.57	873.11
August	743.88	1.0253	762.70
September	752.95	1.05	790.60
October	837.41	1.05	879.28
November	738.87	1.05	775.81
December	728.20	1.05	764.61

9,180.24

9,224.56

116      1914  
            January

January	537.22	1.05	564.08
February	724.44	1.05	760.66
March	684.01	1.05	718.21
April	737.34	1.05	774.21
May	735.24	1.05	772.00
June	704.93	1.05	740.18
July	615.12	1.00	615.12
August	661.42	85	562.20
September	631.28	80	505.02
October	660.45	80	528.36
November	634.37	80	507.50
December	554.65	80	443.72

7,880.47

7,491.26

1915

January	525.39	80	420.31
February	382.27	70	267.59
March	486.79	66.72	324.79
April	496.30	60	297.78
May	646.14	60	387.68
June	450.64	60	270.38
July	583.85	60	350.31
August	501.66	61.66	308.95

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September	577.66	70.77	408.81
October	537.04	66.67	358.04
November	317.69	89.64	284.78
December	651.03	1.0769	701.09

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	6,155.86		4,380.51
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## 1916

January	533.89	1.2384	661.17
February	459.96	1.30	597.95
March	479.29	1.4657	702.50
April	319.83	1.55	495.74
May	556.76	1.55	862.98
June	493.33	1.55	764.66
July	490.50	1.5168	743.99
August	491.19	96.55	474.24
September	479.39	90	431.45
October	483.86	90	435.47
November	482.48	90	434.23
December	154.17	1.00	154.17
December	139.38	1.20	167.26
December	165.37	1.40	231.52

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	5,729.40		7,157.33
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## 1917

January	140.55	1.60	224.88
January	290.31	1.70	493.53
February	505.32	1.70	859.04
March	162.79	1.80	293.02
March	289.68	1.90	550.39
April	437.59	1.90	831.42
May	461.81	1.90	877.44
June	423.93	1.90	805.47

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July	380.62	1.90	723.18
August	170.39	1.90	323.73
August	167.08	2.00	334.16
September	345.73	2.00	691.46
October	334.21	2.00	668.42
November	81.69	2.00	163.28
December	322.06	2.00	644.12

	<u>4,513.76</u>	<u>8,483.54</u>
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Grand Total	94,004.43	67,732.94
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Plus pipage earnings on 20,649.94 bbls. at 5c. per bbl. ....	1,032.47
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Plus pipage earnings on 73,354.99 bbls. at 10c. per bbl. ....	7,335.50
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\$76,100.91

117 Statement Showing Cost of Drilling, Equipping  
and Operating Mason Mineral No. 1, Caddo  
Parish, La., to Dec. 31st, 1917.

Commenced drilling April 16, 1909—Completed June 6,  
1909.

Expenditures.

Drilling and Equipping No. 1 ....	10,119.86
Operating Expenses to Dec. 31, 1917	<u>23,947.27</u>

Total Outlay .....	34,067.13
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## Oil Production (Gross)

94,004.43 bbls. at various prices, plus		
pipage . . . . .	76,100.91	76,100.91
		<hr/>
		42,033.78

Balance Paid Out Dec. 31, 1917.

## Total Runs Divided as Follows:

	Barrels	Value.
R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen . . . . .	7,041.08	3,708.30
E. Hanszen . . . . .	941.87	952.44
D. P. Eubank . . . . .	1,883.71	1,905.00
Sam W. Mason . . . . .	1,883.71	1,905.05
R. L. Stringfellow . . . . .	2,346.74	1,776.54
J. B. Stokley . . . . .	1,173.34	888.27
Gulf Refining Company of Louisiana	78,337.35	56,438.74
	<hr/>	<hr/>
	94,004.43	67,732.94

## Paid For as Follows:

R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen . . . . .	6,718.32	3,304.03
E. Hanszen . . . . .	619.11	548.17
D. P. Eubank . . . . .	1,238.26	1,096.51
Sam W. Mason . . . . .	1,238.26	1,096.51
R. L. Stringfellow . . . . .	1,916.45	1,237.48
J. B. Stokley . . . . .	958.19	618.73
Gulf Refining Company of Louisiana	78,337.35	56,438.74
	<hr/>	<hr/>
	91,422.57	64,498.82



## Amounts Held up Account Litigation.

Mrs. Lydia M. McMullen, Trustee	322.75	404.27
E. Hanszen .....	322.75	404.27
D. P. Eubank .....	645.45	808.49
Sam W. Mason .....	645.45	808.49
R. L. Stringfellow .....	430.30	539.06
J. B. Stokley .....	215.16	269.54
	<u>2,581.86</u>	<u>3,234.12</u>

## Summary.

Amounts Paid for .....	91,422.57	64,498.82
Amounts in Litigation .....	2,581.86	3,234.12
	<u>94,004.43</u>	<u>67,732.94</u>

## Division of Oil From May, 1910, to December 1, 1911.

Mrs. Lydia H. McMullen, et al ..	3/24
R. L. Stringfellow .....	1/36
J. B. Stokley .....	1/72
Gulf Refining Company of Louisiana .....	5/6

## 118 Division of Oil from December 1, 1911, to Present Time.

Mrs. Lydia H. McMullen .....	1/48
E. Hanszen .....	1/48
Sam W. Mason .....	1/24

D. P. Eubank .....	1/24
R. L. Stringfellow .....	1/36
J. B. Stokley .....	1/72
Gulf Refining Company of Louisiana .....	5/6

3-Mar. 21, 1918-5.

119      No. 1154. No. 1156. No. 1159. No. 1167. No.  
1168. No. 1170. No. 1171. No. 1172.

To the Honorable Rufus E. Foster United States Judge.  
May it please your Honor:

Having completed my investigation and report to you as to class "A" suits, I take up the above suits which have been classed as "B". In class "A" the defendants disputed title in the United States. In these suit defendants admit title in the United States as to the land, but claim under mineral locations. The Government claims these mineral locations, are null because made after the Proclamation of the President of the United States, December 15, 1908 and the withdrawal order of the Government July 2, 1910, and even if the withdrawal order was legal, the said order did not include in its terms any land in Township 20, N. R. 16 West. These issues have already been virtually decided by your Honor on the motion of defendants to dismiss the suits and decide in favor of the plaintiff. Defendants concede (page 2 brief) that your Honor's decision and the decision of the Supreme Court of the United States, in 236 U. S. 456, that for the purpose of hearing before me, the case should be treated for the time being as if the defendants have no title or right in the land, the only question is the extent to which they should be held liable for the oil ex-

tracted. On this point the difference between the Government and the defendants is whether or not the cost of drilling the wells, equipping and operating them should be deducted from the value of the oil.

I am inclined to the opinion that these deductions should be made in the settlement for the following reasons:

"This is a question to be determined by the Federal Courts sitting in Louisiana, according to the law of Louisiana.

Jackson vs. V. S. & T. R. R., 99 U. S. 513 (25 L. Ed. 462 New Orleans vs. Christmas, 131 U. S. 191, 120 (33 L. Ed. 106).

The law of Louisiana is settled that one who in good faith (or even in legal bad faith technically, though in moral good faith) produces oil or gas from the land of another is liable only for the difference between the value of the mineral so produced and the cost of producing it; that is, the cost of drilling, equipping and operating the well, through which such liquid or gaseous minerals are brought to the surface.

"The real value of the gas used by plaintiff is its value in place. But the plaintiff was not the owner of the gas at the time, and the record does not disclose any method by which the value thereof might be arrived at. The only method for measuring such value suggested is to ascertain the value of the gas after it was brought to the surface and reduced to possession and then subtract the cost of reducing to possession."

See Cooke vs Gulf Refining Co. of La. 135 La, 610 and the cases therein cited.

In *Martel vs. Jennings-Heywood Oil Syndicate*, 114 La., 359, the Court held that one who without right and with full knowledge of plaintiff's title drilled on plaintiff's land and produced oil was entitled to reimbursement out of the oil of all the expenses, ordinary and incidental, incurred in producing, transporting and preserving the same; and, if sold, the additional expense of sale, saying:

"The Civil Code declares the 'the fruits produced by the thing belong to the owner though produced by the work and labor of a third person, on the owner's reimbursing such person his expenses'. Article 501. Laurent in discussing Code Napoleon, Article 548, corresponding to Article 501, says:

"This is a principle of equity which will not permit the owner to enrich himself at the expense of another, even though he be in bad faith. This applies to all the expenses to which the possessor has been subjected".

Again in *Voiers vs Atkins*, 113 La., 342, after discussing the rights and liabilities of the mala fide possessor, the Court said:

"The claim for fruits and revenues is nothing more than a claim for indemnity for loss, and naturally may be defeated by proof that, instead of loss, there has been gain."

"The theory is well and fully expounded in the case of *Wilson vs Benjamin*, 25, La., Ann. 588, as follows:

"The claim is one in damages for the wanton detention of property, and, although the trespasser is not al-

lowed to prefer a claim for the enhanced value of the soil attributable to his improvements, yet in the admeasurement of damages to which he is subject the benefit derived from such improvements become an important element. The improvements were worth fully the amount at which the detention of the property might be appraised."

In view of the rather unsettled jurisprudence prior to the decision of the Supreme Court of the United States in 236 U. S. 456, handed down February 23, 1915, I consider the opinion generally held by the Bar and given to defendants by their counsel prior to that decision, operated at least to put the locators in the position of moral good faith.

121 A question is raised by the government in the Norvell case contending that the locators there were mere dummies of the Gulf Refining Co., and that neither they nor the Gulf Refining Co., should be recognized or entitled to any rights even tho the withdrawal proclamation had not issued; that what they did in making the location was a fraud on the Government and in the title of the Statutes of the United States, Sec. 2331. This statute limits the location on mineral lands to 20 acres for each individual. As a matter of fact the location was made by Norvell and seven individuals, but really for the benefit it is claimed of the Gulf Refining Co., Norvell says in his testimony he and his associates acted under the following conditions.

"In answer to the interrogatories B. R. Norvell said that C. H. Markham advised him of the existence of this tract of Government land in Caddo Parish, "that he had been advised that his company could only locate twenty acres; that his company was taking up oil lands in that vicinity, and that if myself and friends would locate a mining claim on the land, his company would

buy or lease it from us". The location was made according to Mr. Norvell, 'with a definite understanding that while it would be our claim and our land, if we secured title, we would sell it or lease it to Mr. Markham's Company. We then went ahead and had Mr. Bell to locate the claim.'"

A contract was made between Norvell and his associates and the Gulf Refining Co., the Company undertaking to develop the land for oil to pay the locators one-half of the oil until the proceeds should amount to \$4000.00. The Gulf Refining Company acted under advice of its general attorney Edward Greer, Esq., who advised as follows:

"Mr. D. Edward Greer answered some of the interrogatories on behalf of the Gulf Refining Co., of La. At and prior to the time the location was made on Dec. 22, 1908, Mr. Greer was the general attorney of the company. He stated in substance:

That the Gulf Refining Co., learned that this land belonged to the Government, and requested Mr. Greer to determine whether or not the United States had title, and if so, to ascertain whether a valid mining location could be made on same. Mr. Greer advised Mr. Markham that the company could take up only twenty acres in one body, but that some reputable lawyers thought a corporation, having more than eight stockholders, would be deemed a mining association, and as such could take up 160 acres. Mr. Markham was advised by Mr.

122 Greer not to attempt to have employees of the Gulf Refining Company make a mineral location, but was told that he (Markham) might give the benefit of his information to his friends in order that they might make a mineral location, and that the

company might then lease the property from the locators. Powers of attorney from the locators were given to W. W. Bell, who had the land surveyed and staked out, and who filed the notices of the mineral location on the records of Caddo Parish.

On the same day the location was made, a contract was entered into between the locators and the Gulf Refining Company, by which the company undertook to develop the land for oil, and to pay the locators one-half of the oil produced until the proceeds should amount to \$4,000.00."

Acting under this, I do not think that the Gulf Refining Company should be too severely punished. I do not think they were wilfull looters of the public domain nor reckless trespassers thereon and should not be mulcted in damages beyond the actual loss to the Government and this loss is estimated at the net value of the oil and gas brought to the surface when it breathed the breath of mercantile values. I think therefore the Norvell case should be treated for this purpose in the same class as the others.

In the case of Norvell, No. 1167, \$41,524.50 was spent by the Gulf Refining Co., in drilling, equipping and operating the wells and only \$14,561.81 worth of oil brought to the surface. Out of this oil the Gulf Refining Co., paid \$4000.00 to the defendants Norvell, Strouck, Weaver, Smilker, Millard, Denman and Blounbatt; for this amount there should be judgment in favor of the United States as follows:

The Gulf Refining Co., and the other defendants (except Blanchett not a party to suit—the rights of the Government to be reserved as against Blanchett) in solido for \$3,500. 00 and:

The Gulf Refining Co., in the further sum of \$500.00 for amount paid by it out of the oil to Blanchett.

I further recommend judgment against all defendants decreeing the mineral locations herein claimed to have been made, to be null and void.

123 In the case 1154, United States vs W. M. Green, et al, I find the total production of oil was in value \$11,042.51. Green made a mineral location on the land April 25, 1910 and leased to the Humphrey Oil & Gas Co., who drilled the well; they operated the well until December 17, 1912, when H. L. Helpen and E. G. Palmer operated till January 6, 1913, then succeeded to the Pierce Oil Co. who operated it till August 1, 1914. This Company asserted a counterclaim for expense of operation, etc., to bring the oil to the surface for \$2,697.80; this amount should be allowed as equitable consideration for reasons given above. The total output of the oil was in value \$11,042.51, all of which was delivered to the Standard Oil Co. of La., who paid out as royalties, the amounts as follows:

Humphrey Oil & Gas Co.	\$5,199.58
Franklin Oil & Fuel Co.	690.03
Pierce Oil Co.	2,986.95
H. L. Haiperin	737.90
Wm. M. Green (Standard Oil is holding this for account of Green)	690.10
E. G. Palmer	737.95

I recommend judgment as follows:

1. Against the Standard Oil Co., of Louisiana for \$5,199.58 being value of production less counterclaim and royalties.



2. Against the Pierce Oil Co., and Standard Oil Co., of La., in solido for \$289.15, being difference between value of production received by Pierce Oil Co., and the counterclaim of that Company.

3. Against each of the above defendants (except Humphrey Oil & Gas Co.) and the Standard Oil Co., of La., in solido in the amount used by them as set out above to-wit:

Franklin Oil & Fuel Co.	\$690.03
H. L. Heilperin	\$737.90
W. M. Green	\$690.10
E. G. Palmer	\$737.95

124 United States vs Henry Hunsicker, et al.

Mineral location made on this tract March 20, 1910 by Hunsicker and C. J. Greene who leased the land to the Producers Oil Co., and operation began before the second withdrawal order but after the first withdrawal. I am inclined to put this case on the question of moral good faith in the same as others, Class "B". The well produced oil valued at \$55,776.89 and the out-put sold to the Texas Company by the Producers Oil Co., who incurred the expense of \$24,414.43 for drilling and administration the well, leaving \$31,362.46 for which judgment should be had against the Producers Oil Co., and Texas Company in solido. In the lease from Hunsicker and Greene they were to receive on a basis which up to January 1st, 1918, had amounted to \$9,294.48 which is being held by the Texas Company for the account of Hunsicker & Greene. There should be judgment for this amount of \$9,294.48 against Henry Hunsicker, Chas. J. Greene, Jr. and the Producers Oil Co., and Texas Company in solido, being the amount of this royalty.

## United States vs Arkansas Natural Gas Co. et al.

This well here produced gas valued at \$7,046.54 against which is a counterclaim of the Arkansas Natural Gas Co., for expenses etc., necessary to bring the gas to the surface, amounting to \$4,842.12; the difference between the counterclaim and production is \$2,204.42. The Arkansas Natural Gas Co., paid as royalties as follows:

Sam W. Mason	\$306.25
Wm. L. and H. McMullen	\$612.50
	<hr/>
	\$918.75

The other royalties paid were to

W. H. Matthews	\$175.00
D. P. Eubanks	\$316.25
	<hr/>
	\$491.25

These two parties are not cited and the Government's rights against them should be reserved.

There should be judgment versus Arkansas Natural Gas Company:

125        1. For \$1,285.67, value of production less counterclaim and royalties paid to Mason and W. H. Mullen (against whom the rights of the Government are reserved as above).

2. Against defendants Mason and W. H. McMullen, and Arkansas Natural Gas Co. in solido for \$918.75, amount royalties paid to them by Arkansas Natural Gas Co., altho no counterclaim was pleaded, the evidence on it was admitted without objection and it is better to deal with it now.

## United States vs W. H. Matthews, et al.

The mineral location made herein April 24, 1910, and well that produced was drilled, and administered by the Pure Oil Operating Co.

For reasons already given, I think the expenses of drilling and operation should be allowed. I find total amount produced was delivered to two companies, the Gulf Refining Co., oil valued at \$12,572.85 who paid royalties as follows:

Lydia H. McMullen	\$589.35
Sam W. Mason	\$196.45
D. P. Eubanks	\$196.45
F. A. Leonard	\$196.45
W. H. Matthews	\$196.45
H. E. Barns	\$196.45
	<hr/>
	\$1,571.60

The Gulf Refining Company paid the producing Co., Pure Oil Operating Co., 7/8% of the production, i. e., \$11,001.25. Oil was also run from this land by the Standard Oil Co. of La., to value of \$68,544.98, and it paid the following royalties:

L. H. McMullen	3,213.13
F. A. Leonard,	1,071.05
D. P. Eubanks	1,071.99
W. H. Matthews,	1,071.05
Natalie Oil Co.	242.53
H. E. Barns H. L. Heilperin	838.48
Sam W. Mason	1,071.05,
	<hr/>
	\$8,568.28

126        The Standard Oil Co. paid the Pure Oil Operating Co., 7/8ths of the production valued at \$59,976.70. The total amount received by the Pure Oil Operating Co., was \$70,977.95. The total cost of drilling, equipping and operating wells \$59,576.36. Difference between value of oil produced by Pure Oil Co. \$81,117.83 and counterclaim of \$58,976.70, is \$21,541.47.

Having concluded to allow the counter claim for reasons given above:

I recommend judgment in favor of the government for the land in question and give judgment as follows:—

(1). "Against the Pure Oil Operating Co., and the Gulf Refining Company of Louisiana, in solido, and each of the royalty claimants of the latter company, in solido with said companies, for the amounts set opposite their names as aforesaid, aggregating ....\$1,571.60.

(2). Against the Pure Oil Operating Company and the Standard Oil Co. of Louisiana, in solido, and each of the royalty claimants of the latter company, in solido with said companies, for the amounts set opposite their names, as aforesaid, aggregating .....\$8,568.28.

(3). Against the Pure Oil Operating Company, the Gulf Refining Company, and the Standard Oil Company of Louisiana, in solido, for value of oil produced, less royalties and counterclaims ..... \$11,401.59

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\$21,541.47"

The rights of the Standard Oil Co., whatever they may be, should be reserved against the Gulf Refining Co., and Pure Oil Operating Company and against those to

whom royalties have been paid by it, also the rights of the Gulf Refining Co., should likewise be reserved against the Pure Oil Co., and the parties above to whom royalties were paid.

No. 1170 U. S. vs. Eubanks, et al.

The oil drawn from this land was in value \$4,806.43, plus pipe line earnings \$713.09, totalling \$5,519.52. The well was drilled and operated by the Gulf Refining Company at a cost of \$13,628.94, so no gain was made but a loss entailed. I think, however, judgment should be in solido against Gulf Refining Co., and those who received royalties from the oil drawn from the property, (which I hold defendants had no right or title to) aggregating \$1,001.15, paid to the following parties:

127	J. L. Urquhart	\$200.21
	T. D. Starnes	\$100.12
	Eugene Hanszen	\$ 31.30
	J. B. Files	\$300.00
	D. P. Eubanks	\$369.14
		<hr/>
		\$1,001.15

each of the above to pay the amount actually received by them to the Government, but the Gulf Refining Company being bound for the whole amount. Judgment should go in favor of the Government for the land.

No. 1171 U. S. vs. Lydia H. McMullen

The well was drilled on the premises in suit by the Pure Oil Operating Company under mineral location by defendants Hanszen, Mason, Eubanks, Barns and String-

fellow. The Producing Company sold all the oil to the Gulf Refining Co., and the Standard Oil Co., of Louisiana. The total value of the oil was \$47,770.81.

Amount of drilling and operating \$54,916.70. The Gulf Refining Co. took from the land \$11,688.91 worth of the oil and paid the royalties as follows out of the oil, to-wit:

Lydia H. McMullen	\$365.28
Sam W. Mason	\$182.64
D. P. Eubanks	\$182.64
R. L. Stringfellow	\$365.28
H. E. Barns	\$365.28
	<hr/>
	\$1,461.12

The amount paid by the Gulf Refining Co., to the Pure Oil Operating Company was \$10,227.79.

Amount of oil taken by the Standard Oil Co., from the land was \$36,081.90, and the Standard Oil Co., paid the following royalties:

L. H. McMullen	\$1,127.56
Sam W. Mason	563.78
D. P. Eubanks	563.78
R. L. Stringfellow	1,127.56
Natalie Oil Co. )	
H. E. Barns & )	
H. L. Heilperin )	1,127.56
	<hr/>
	\$4,510.24

Amount paid Pure Oil Co. by Standard Oil Co. of Louisiana. \$31,571.66

Total amount received by Pure Oil Operating Co., by the Standard Oil Co., and Gulf Refining Co., 41,799.46

128 I think for reasons above given that the counterclaim should be allowed, which leaves only the royalties to consider; that recipients of these royalties contributed nothing and received money which should have gone to the true owners, the United States, and I recommend judgment against each of the recipients of the royalties from the Gulf Refining Company in amount set opposite their names, and against the Gulf Refining Company for the whole amount of \$1,461.12 and the recipients to be bound in solido with the Gulf Refining Co., to the extent of payment to each; also judgment against the Standard Oil Co., of La., to the full amount of \$4,510.24, amount handed by it to the above parties as royalties, and against each one receiving royalties to the extent of the amount received by him to be bound in solido with the Standard Oil Co., to said extent. I recommend the right of the Gulf Refining Co., and the Standard Oil Co., of La. to recover from these royalty payees, be reserved.

I recommend the government's title to the land be recognized.

No. 1172, U. S. vs Sam W. Mason, et al

This well was drilled by the Gulf Refining Co., under lease from Sam W. Mason and W. W. Mason who made mineral locations on March 26, 1910.

The well produced in oil values	\$67,732.94
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Cost of drilling and operating which should be allowed	\$34,067.13
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\$33,065.91

Royalties were paid as follows:

R. L. Stringfellow & J. B. Stockley	\$158.65
Mrs. Lydia H. McMullen	3,708.30
Eugene Hanszen	952.44
D. P. Eubank	1,905.00
R. L. Stringfellow	1,776.54
J. B. Stockley	888.27
	<hr/>
	11,294.20

Allowing the counterclaim I recommend judgment against the defendants, decreeing the property to belong to the Government and money judgment as follows:  
against Gulf Refining Co. \$33,665.81

Against the Gulf Refining Co. and its several royalty claimants as above in solido with said company for the amounts set opposite their names as above 11,294.20

Total	<hr/>	\$44,960.01
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129 In all of the above cases, in addition to the recommendation heretofore made with respect to the amount the Government should recover, I recommend that the decree grant to plaintiff-further relief in this to-wit:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after Dec. 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral Laws of the United States.

2. That the mineral locations and leases under which the defendants claim, may be declared null and void and



held for naught, in so far as they may include directly, or indirectly, the property in controversy in these suits and to that extent that the said mineral locations and leases be cancelled and annulled.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

3. That said defendants, during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts, as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

Inasmuch as the defendants have accounted for the value of the oil produced up to January 1, 1918, it is prayed:

That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff, of all oil extracted from said lands since January 1, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH  
Master in Chancery.

130 Indorsed: Opinion and recommendation of Master in Chancery. E. H. Randolph. Recorded in Chancery. Order Book, Vol. 5 Folio 588, 599. Filed January 11, 1919, 11:25 A. M.

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131 In Re Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploita-

tion of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies adjacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be

the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

133 The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good

faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur Oil Company because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly, et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

134 All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15, 1919.

Indorsed:—Opinion. Filed July 17, 1919.

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135 In the District Court of the United States for the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1172 In Equity.

Sam W. Mason, et al,

Defendants.

Now comes Sam W. Mason, R. L. Stringfellow, J. B. Stockley, Mrs. Lydia H. McMullen, E. Hanszen, D. P. Eubank, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report

of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

## 1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that date so withdrawn.

## 2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered, as to the liability which the Master certified as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

## 3.

That the Master has in said report erroneously reported that judgment should be rendered against this defendant in the sum of \$33,665.81; whereas, if the report of the Master were otherwise correct, the Master should have reported and certified that such judgment should not be in excess of \$22,371.61; the Master having erroneously failed to subtract the value of the royalty oil from the net production of the Gulf Refining Company of Louisiana.

## 4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of



137 judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,  
Solicitors for the Gulf Refining  
Company of Louisiana.

Indorsed: Exceptions of the Gulf Refining Company of Louisiana to the report of the Special Master. Filed Jan. 30, 1919.

B.

138 In the District Court of the United States for  
the Western District of Louisiana

United States of America,

v.

No. 1172.

Sam W. Mason, et al.

Now into this honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counter claim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the above numbered and entitled cause, being plaintiff's exhibits "A" "B" "C" "D" "E" "F-1, 2, 3, 4, 5", "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", (See list of offerings made by plaintiff in note of evidence on hearing of special pleas, Feb. 28, 1918).

This Court held in said cause that the withdrawals included Township 20 N., R. 16 West, and prohibited mineral locations on the public lands described therein, including the property in controversy.

2. The Master's report shows that the well was drilled by the Gulf Refining Company of Louisiana under lease from Sam W. Mason and W. W. Mason, who made a mineral location March 26, 1910. The testimony of Sam W. Mason, one of the mineral locators, taken on the hearing of special pleas, set forth in answer of defendants (pp. 1 to 3 inclusive), shows that no work leading to a discovery on the land embraced in said mineral location was begun until April 16, 1910.

Plaintiff avers that the drilling of said wells and the removal of oil from the said land by the defendants were in violation of the withdrawal order of December 15, 1908.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, (record 36-37). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a). Against the Gulf Refining Company of Louisiana for the total value of the production, less royalties paid of \$11,294.20, all as shown by the Master's report, amounting to the sum of ..... \$56,438.74

(b). Against the Gulf Refining Co. of Louisiana and the several royalty claimants of said Company, named in the Master's report, in solido with said Company, for the amounts set opposite their names in said report, all as shown by the Master's report, aggregating

\$11,294.20

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\$67,732.94

140      Said sums aggregating \$67,732.94, being total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,  
Special Assistant to the At-  
torney General.

Indorsed: Plaintiff's exceptions to the Master's report. Filed Jan. 30, 1919.  
B.

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141 In the District Court of the United States for  
the Western District of Louisiana Shreve-  
port Division.

United States of America,

v.

No. 1172 In Equity.

Sam W. Mason, Mrs. Lydia H. McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. G. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, the South half ( $S\frac{1}{2}$ ) of the North-east quarter ( $NE\frac{1}{4}$ ) of Section Five (5), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

142 III. That the mineral location made March 26, 1910, recorded March 26, 1910, in Book 59, Page 234, by defendants Sam W. Mason and W. W. Mason, and lease thereof executed by the said Sam W. Mason and W. W. Mason, March, 28, 1910 to the Gulf Refining Company of Louisiana, recorded in Book 59, page 238, said instruments having been recorded on the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and, to that extent the said mineral location and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Sam W. Mason, Mrs. Lydia H. McMullen, J. A. McMullen, Eugene Hansen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and the Gulf Refining Company of Louisiana shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and the said defendant company is hereby condemned and ordered to pay to plaintiff, the full sum of Thirty-three Thousand Six Hundred Sixty-five and 81/100 (\$33,665.81) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, Robert L. Stringfellow and J. B. Stockley, in solido; and the said defendants are hereby condemned and  
 143 ordered to pay to plaintiff, the full sum of One Hundred and Fifty-eight and 65/100 (\$158.65) Dollars, together with five percent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thousand Seven Hundred and Eight and 30/100 (\$3,708.30) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Eugene Hanszen in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Nine Hundred and Fifty-two and 44/100 (\$952.44) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand Nine Hundred and Five (\$1,905.00) Dollars together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand Seven Hundred and Seventy-six and 54/100 (\$1,776.54) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and

J. B. Stockley, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eight Hundred and Eighty-eight  
144 and 27/100 (\$888.27) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff, of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XIV. That the said defendants be, and they are hereby, condemned and ordered to pay all costs of this suit.

XV. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surren-



der and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Ten Thousand (\$10,000) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of

his duties and the rendition by him of a true  
145 and correct accounting and payment of all  
money, oil or other property that may come into  
his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,  
United States Judge.

Indorsed: Decree. Filed August 12, 1919.

146 In the District Court of the United States for  
the Western District of Louisiana.

United States of America,  
Plaintiff,  
vs. No. 1172 In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A.  
McMullen, Eugene Hanszen, Robert L. Stringfellow,  
Dillard P. Eubank, J. B. Stockley, C. F. Griggs,  
Elizabeth Mason, Margaret Mason, John B. Mason,  
W. C. Mason, A. A. Mason, A. D. Mason, Gulf Re-  
fining Company of Louisiana,

Defendants.

To the Honorable Judge of the District Court of the  
United States for the Western District of Louisiana,  
Sitting within and for the Shreveport Division:

The above named defendants, Sam W. Mason, Mrs.  
Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hans-  
zen, Robert L. Stringfellow, Dillard P. Eubank, J. B.  
Stockley, C. F. Griggs, Elizabeth Mason, Margaret Ma-  
son, John B. Mason, W. C. Mason, A. A. Mason, A. D.  
Mason, and the Gulf Refining Company of Louisiana,  
feeling themselves aggrieved by the decree made and  
entered in this cause on the 13th day of August, 1919,

do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which has been filed, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

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J. A. THIGPEN,  
S. L. HEROLD, ,  
Solicitors for Defendants.

#### ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond, conditioned as required by law in the sum of Seventy Thousand (\$70,000.00) Dollars.

RUFUS E. FOSTER,  
United States District Judge.

Sept. 23rd, 1919.

Indorsed: Petition and order for Appeal. Filed Sep. 23, 1919.  
B.

148 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1172, In Equity.  
Sam W. Mason, et al., Defendants.

And now, on this the 22nd day of September, 1919, come all the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 13th day of August, 1919, is erroneous and unjust to the defendants; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, March 26th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

## Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

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## Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

## Sixth.

That the Court erred in condemning defendants in solido.

## Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

## Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant, Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.

## Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them,

which is denied), in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of all the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. A. THIGPEN,  
S. L. HEROLD,  
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Sept. 22, 1919.

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#### SUPERSEDEAS BOND ON APPEAL.

150 In the District Court of the United States for  
the Western District of Louisiana.

United States of America, Plaintiff,  
vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, A. A. Mason, W. C. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

Know all men by these presents: That we, Sam W. Mason, Mrs Lydia Hanszen McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, A. A. Mason, W. C. Mason, A. D. Mason and

the Gulf Refining Company of Louisiana, as principal, and American Surety Company of N. Y., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Seventy Thousand (\$70,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 23rd day of September, 1919.

The condition of the above obligation is such that,

Whereas on the 13th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and the Gulf Refining Company of Louisiana were defendants, numbered on the Equity Docket, No. 1172, a decree was rendered, filed, and signed against the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason and the Gulf Refining Company of Louisiana, and the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and the Gulf Refining Company of Louisiana having obtained an appeal with supersedeas

to the United States Circuit Court of Appeals for the Fifth Circuit;

Now if the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

SAM W. MASON,  
By S. L. HEROLD, Atty.  
MRS. LYDIA H. McMULLEN,  
By S. L. HEROLD, Atty.  
EUGENE HANSZEN,  
By S. L. HEROLD, Atty.  
ROBERT L. STRINGFELLOW,  
By S. L. HEROLD, Atty.  
DILLARD P. EUBANKS,  
By S. L. HEROLD, Atty.  
J. B. STOCKLEY,  
By S. L. HEROLD, Atty.  
C. F. GRIGGS,  
By S. L. HEROLD, Atty.  
ELIZABETH MASON,  
By S. L. HEROLD, Atty.  
MARGARET MASON,  
By S. L. HEROLD, Atty.  
JOHN B. MASON,  
By S. L. HEROLD, Atty.  
A. A. MASON,  
By S. L. HEROLD, Atty.



W. C. MASON,  
 By S. L. HEROLD, Atty.  
 A. D. MASON,  
 By S. L. HEROLD, Atty.  
 GULF REFINING CO., OF LA.,  
 By S. L. HEROLD, Atty.  
 Principals, Atty.  
 (Seal) AMERICAN SURETY CO. OF  
 N. Y.,  
 By R. L. GAFFNEY, Atty in fact,  
 Surety.

Approved:

This 23rd day of September, 1919.

RUFUS E. FOSTER,  
 United States District Judge.

Indorsed: Supersedeas Bond. Filed Sept. 23, 1919.

153 In the District Court of the United States for  
 the Western District of Louisiana, Shreve-  
 port Division.

United States of America,  
 vs. - No. 1172, In Equity.  
 Sam W. Mason, et al.

To the Honorable, the Judge of the District Court of the  
 United States, for the Western District of Louisi-  
 ana:

Now into this Honorable Court comes the United States  
 of America, plaintiff in the above numbered and entitled  
 cause, and with respect represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

#### ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,  
United States Judge.

154      **ASSIGNMENT OF ERRORS ON PLAINTIFF'S  
CROSS APPEAL.**

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,  
vs.            No. 1172, In Equity.  
Sam W. Mason, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order was issued for the purpose of conserving the

public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

### III.

The Court further erred in allowing the said counterclaim and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knowledge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

### IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as

shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

156 Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,  
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Cross Appeal, Order Thereon and Assignment of Errors. Filed Nov. 12, 1919. B.

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	Numbers
United States v. W. W. Green, et al.	1154.
United States v. Henry Hunsicker, et al.	1156.
United States v. Arkansas Natural Gas Company, et al.,	1159.
United States v. B. R. Norvell, et al.	1167.
United States v. W. H. Matthews, et al.	1168.
United States v. D. P. Eubank, et al.	1170.
United States v. Lydia H. McMullen, et al.	1171.
United States v. Sam W Mason, et al.	1172.

The above numbered and entitled causes coming on to be heard on application of the parties for settlement of the records on appeal;

And it appearing to the Court that the said suits, with the exception of the case of the United States v. B. R. Norvell, et al., No. 1167, were consolidated for the purpose of trial, and counsel for plaintiff and defendants having agreed to consolidate all of said causes for the purpose of appeal and to send same up on appeal in one transcript;

And it further appearing to the Court that there is conflict between the praecipe filed by defendants and the praecipe filed by plaintiff with respect to the contents of the record on appeal in the suits that have heretofore been appealed, and all of said cases having now been appealed;

And it further appearing to the Court that the evidence offered in said suits is not voluminous, and that the inclusion of all of said cases in one transcript will avoid duplication of transcripts and will facilitate the hearing of said cases on appeal;

And counsel for all of the parties having consented thereto;

It is ordered that the Clerk of Court shall incorporate all of said cases in one transcript, which shall include the testimony in the exact words of the witnesses and the entire record, with the exception of such portions of said record and exhibits that may, by agreement of counsel, be eliminated.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,

United States Judge.

O.K.

ROBERT A. HUNTER,  
HAMPDEN STORY,

By S. L. HEROLD,  
S. M. COOK,  
J. C. PUGH,

Indorsed: Order Amending Praecipis Filed Jan. 3,  
1920.

B

# STIPULATION OF COUNSEL.

158 In the United States District Court for the  
Western District of Louisiana.

No. 1154, United States v. W. W. Green, et al.

No. 1156, United States v. Henry Hunsicker, et al.

No. 1159, United States v. Arkansas Natural Gas Co.,  
et al.

No. 1167, United States v. B. R. Norvell, et al.

No. 1168, United States v. W. H. Matthews, et al.

No. 1170, United States v. D. P. Eubank, et al.

No. 1171, United States v. Lydia H. McMullen, et al.

No. 1172, United States v. Sam W. Mason, et al.

Counsel for plaintiff and defendants in all of the above  
suits do hereby enter into the following stipulation in  
connection with the order of Court signed January 1, 1920,  
which order relates to the contents of the records on ap-  
peal in said causes:

Whereas, said order was entered by consent of coun-  
sel for the purpose of reducing the size of the respective  
transcripts; and,

Whereas, the said order provides, among other things, that all of the causes therein referred to shall be included in one transcript, which counsel have since been advised cannot be done; and,

Whereas, it has been agreed to include in the transcript of appeal in case No. 1172, United States v. Sam W. Mason, et al., certain testimony, exhibits, the Master's report, and the opinion of the Court, which are applicable to all of the suits, and to make said transcript a part of the record on appeal and each of the other cases mentioned:

Now, therefore, it is stipulated that the purpose of said order has been subserved and carried out, and that the transcript prepared in accordance with the stipulation of counsel in the respective suits shall be deemed and construed as having been prepared in full compliance with said order.

It is further agreed that the said order of Court and this stipulation shall be copied into the transcript of appeal in the cause entitled, United States v. Sam W. Mason, et al., No. 1172, and, by reference as aforesaid, shall constitute a part of the record on appeal in each of the above suits.

Thus done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,

Attorney for Plaintiff.

COOKE & COOKE,  
HAMPDEN STORY,

J. C. PUGH,  
THIGPEN & HEROLD,  
J. B. FILES,

Attorneys for all defendants.

Filed May 14, 1920.



## 159                   STIPULATION OF COUNSEL.

in the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1172.

Sam W. Mason, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admission in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendant, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that Bulletin 623, issued by the Government Printing Office, entitled "Petroleum Withdrawals and Restoration Affecting the Public Domain" shall be sent up to the Court of Appeals in the original.

It is stipulated that the decisions of the Commissioner of the General Land Office of the Secretary of the Interior, in the matter of the homestead entries of John T. Bowman, marked Plaintiff's Exhibits M and N, and William J. Alborty, marked Plaintiff's Exhibits O and P, shall be sent up to the Court of Appeals in the original.

160 The documents sent up in the original, as aforesaid, shall be deemed and considered as part of the transcript herein.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

I. Bill of Complaint.

II. Answer of defendants.

III. Plaintiff's Reply to defendants' set-off and counterclaim.

IV. Interrogatories propounded to Gulf Refining Company of Louisiana.

V. Answers of Gulf Refining Company of Louisiana to Interrogatories.

VI. Note of Evidence taken upon hearing of special pleas in this cause.

VII. Order of Court overruling defendants' pleas.

VIII. Order appointing E. H. Randolph as Special Master in Chancery.

IX. Note of evidence taken before the Master in Chancery in this cause and in the suits with which it was consolidated for trial, namely, Nos. 1154, 1156, 1159, 1168, 1170 and 1172, upon the trial of the merits.

X. Telegram from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana, dated December 15, 1908.

XI. Withdrawal order of December 15, 1908, contained in letter of same date from the Commissioner of the General Land Office (approved by the Secretary of the Interior) to the Register and Receiver at Natchitoches, Louisiana.

XII. Letter from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana, dated December 15, 1908.

XIII. Letter from the Director of the Geological Survey to the Secretary of the Interior, dated October 24, 1908.

XIV. Letter from the Director of the Geological Survey to the Secretary of the Interior, dated November 6, 1908.

XV. Withdrawal order of July 2, 1910.

XVI. Pages one and four of statement identified by James W. Neal, Special Agent of the General Land Office, marked plaintiff's exhibit M, showing quantity and value of oil produced, royalties paid and costs of drilling and operating well, together with all other information contained in the said proportions of the statement mentioned.

161 XVII. Report and recommendations of Honorable E. H. Randolph, Master in Chancery, in the suits designated by the said Master as Class "B" cases, being: Nos. 1154, 1156, 1159, 1167, 1168, 1170, 1171, and 1172.

XVIII. Opinion of Court.

XIX. Exceptions of Sam W. Mason, et al., to Master's Report.

XX. Exceptions of Gulf Refining Company of Louisiana to Master's report.

XXI. Plaintiff's exceptions to Master's report.

XXII. Final decree.

XXIII. Petition of defendants for appeal, order thereon and assignment of errors.

XXIV. Supersedeas bond.

XXV. Plaintiff's petition for cross appeal, order thereon and assignment of errors.

XXVI. This stipulation.

Thus done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,

Attorney for Plaintiff.

THIGPEN & HEROLD,

Attorneys for Defendants.

Filed May 14, 1920.

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## CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one-hundred and sixty-one pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is Plaintiff and Sam W. Mason, et al., are Defendants, No. 1172, In Equity, on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk of the United States District Court, Western District of Louisiana.

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Citations omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.*

Extract from Minutes of February 24, 1921.

No. 3548.

SAM W. MASON et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

*Opinion of the Court.*

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, (R. L. Batts, D. Edward Greer, Hampden Story, J. A. Thigpen and S. L. Herold on the brief), for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

*WALKER, Circuit Judge:*

This was a suit in equity brought by the United States, appellee and cross-appellant, (herein referred to as the plaintiff), against the appellants and cross-appellees, (herein referred to as the defendants). The relief prayed for included the cancellation and annulment of a mineral location made on March 26th, 1910, by the defendants Sam W. Mason and W. W. Mason, covering a described 20 acres in Sec-

tion 5, Township 20, Range 16 West, in Caddo Parish, Louisiana, and of a lease made by said Sam W. Mason and W. W. Mason to the defendant Gulf Refining Company of Louisiana; an adjudication that said land is the property of the plaintiff; the issuance of an injunction; for an accounting by the defendants for oil and gas removed or extracted from said land, and for all moneys, or things of value, derived from the sale or disposition of same, and for all rents, royalties and proceeds arising from the sale or lease of the same, and the recovery by the plaintiff from the defendants of all such sums so received by them, and all damages sustained by the plaintiff in the premises. The court decreed the cancellation of the above mentioned mineral location and lease, that the land mentioned is the property of the plaintiff, and that the defendants pay to the plaintiff the ascertained value of the oil produced from the well bored on the land, less the ascertained drilling and operating costs incurred. The defendants complain of the action of the court in deciding against the validity of the above mentioned mineral location and in not deducting as an expense of operation, from the net amount produced by the defendant Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties. The plaintiff complains of the decree because it was not in its favor for the full value of the oil extracted and removed from the land, without deduction of the amount of costs and expenses incurred in producing that oil.

The plaintiff relied on the following order as having the effect of invalidating the above mentioned mineral location:

"5496.

A. D.

dmg-3fs file.

Department of the Interior,  
General Land Office,  
Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land Office.

See also 1910-44655.

Register and Receiver,  
Natchitoches,  
Louisiana.

SIRS:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,

FRED DENNETT,  
*Commissioner.*

Approved:

JAMES RUDOLPH GARFIELD,  
*Secretary.*

L. R. S."

The defendants admitted that the plaintiff owned the land in question on and before the date of the above set out order, but contend that that order did not have the effect of invalidating the attacked mineral location. That order was "ratified and confirmed and continued in full force and effect" by an order of the President made on the 2nd day of July, 1910, under the authority conferred by the Act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases." (36 St. 847). As the last mentioned order was made after the date of the mineral location in question and after the boring of an oil producing well on the land, the plaintiff must rely on the order of December 15, 1908, to sustain its contention as to the invalidity of the mineral location.

The Director of the United States Geological Survey by several communications addressed to the Secretary of the Interior in October and November, 1908, called attention to waste of natural gas and oil in the Caddo Oil Field, to the fact that lands in, or in the neighborhood of, that field remained in federal ownership, referred to tracts in Township 20 North, Range 16 West as "clearly within the known productive area of this oil and gas field," and recommended that the Government take action to prevent further drilling for oil or gas in that field until effective measures be taken to prevent the waste of gas, and that public lands within and near to that field be withdrawn from entry pending the investigation then under way as to their value for oil and gas. On December 15, 1908, the date of the above set out withdrawal order, the Commissioner of the General Land Office gave notice of the withdrawal to the Register and Receiver at Natchitoches, Louisiana, by a telegram of the body of which the following is a copy:

"Public lands in townships fifteen to twenty-three north, inclusive, of ranges ten to sixteen West, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry, and appropriation."

The Commissioner confirmed his telegram by a letter of the same date which contained the following:

"Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secretary from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal and any applications, selections, or entries based thereupon must be rejected by you subject to appeal."

The mineral location relied on by the defendants was invalid and conferred no right if it was inconsistent with the terms of the above set out withdrawal order. *United States versus Midwest Oil Company*, 236 U. S. 459; *United States vs. Morrison*, 240 U. S. 192. In behalf of the defendants it is contended that the use in that order of



the words "settlement and entry" was meant to refer to acquisition under the homestead law, as only acquisition under that law requires both settlement and entry, and that the use of the immediately succeeding language, "or other form of appropriation," was meant to cover only forms of appropriation more like the one specifically mentioned than one initiated by a mineral location. Certainly nothing in the order plainly indicates the existence of an intention to exempt from its operation any form of appropriation of public land in the townships named. The words used are consistent with the existence of an intention to cover all forms of appropriation of Government land. A mineral location is the initiation of a method of appropriating public land provided for by law. If it is assumed that the words "settlement and entry" referred only to acquisition under the homestead law, and that the making of a mineral location is to be regarded as the initiation of a form of appropriation of a distinctly different class, nevertheless the rule that where particular words of description are followed by general terms the latter will be regarded as applicable only to persons or things of like class is not to be so applied as to keep the words "other form of appropriation" from embracing one initiated by a mineral location, when to do so gives the order of withdrawal an operation different from that intended and disclosed by the officials who made and approved it. *Danciger vs. Cooley*, 248 U. S. 319. The language of the withdrawal order is to be read with reference to the facts and circumstances connected with the making of it and the evils sought to be remedied, and in the light of the contemporaneous construction of it by the official who made it and who was charged with the duty of enforcing it. 36 Cyc. 1137, et seq. Evidence above referred to makes it plain that the order was intended to prevent the waste of gas and oil from Government land and to keep the lands mentioned from passing from Government ownership pending the investigation then under way as to their value for oil and gas. It is evident that the lands embraced in the order were selected for withdrawal because they were within, or in close proximity to, an area already proved to be productive of oil and gas. As lands valuable for minerals are not subject to homestead entry and are by statute reserved from sale, except as otherwise expressly directed by law (R. S. §§2302, 2318), an order of withdrawal was not needed to keep the land in question from passing from Government ownership in either of the just mentioned modes. The situation dealt with by the order was such as to make it extremely unlikely that the appropriation of that land would be attempted otherwise than under the laws relating to placer mineral claims. U. S. Compiled Statutes, §4638. If the last mentioned mode of appropriation was not interfered with by the order, it was ineffective to prevent the only mode of appropriation likely to be resorted to under the then existing circumstances, and the public lands in the townships named remained as much subject to wasteful exploitation of their oil and gas contents as they were before this order was made. If the order had the meaning attributed to it by counsel for the defendants, its futility as a conservation measure was obvious. The order utterly failed to accomplish the purpose disclosed by the circumstances connected with the making of it if it left the land mentioned subject to mineral

locations. The making of the order is not to be dissociated from the contemporary promulgation of it by the official who made it, the Commissioner of the General Land Office. Those acts were parts of one transaction. That official's telegram and letter of the same date to the Register and Receiver in immediate charge of the enforcement of the order show unequivocally that he construed the order as having the effect of withdrawing the land embraced in it from "all settlement, entry and appropriation," with the result that "no right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal." The language of the order is not such as to require that it be given a meaning different from that contemporaneously attributed to it by the maker of it, who was the highest officer of the executive department charged with the duty of executing it. That being so, the contention made in behalf of the defendants as to the meaning and effect of the withdrawal order could not be sustained without disregarding considerations which are entitled to persuasive influence in the interpretation or construction of it. For reasons above indicated, we conclude that the withdrawal order of December 15, 1908, was meant to, and did, prevent such a mineral location as the one relied on from conferring any right on anyone claiming under it.

It follows that the defendants were trespassers. And their occupation and use of the Government's land were with full knowledge of the facts which made such occupation and use unlawful. They knew of the existence of the withdrawal order. In their behalf it is contended that, because, after getting a lawyer's advice on the subject, they, in pursuance of the advice given, acted under the influence of mistakes of law as to the validity and meaning of the order, they were entitled, in an accounting with the Government for the value of the oil taken from its land, to be credited with the drilling and operating costs incurred. If the plaintiff had sued at law to recover the damages for which the defendants made themselves liable, the latter's above mentioned mistakes of law would not have stood in the way of the recoverable damages being measured by the value of the oil taken, without credit or deduction for the expenses incurred by the wrongdoers in getting it. *Union Naval Stores Co. v. United States*, 240 U. S. 284. In the case cited the Naval Stores Company was sued for the conversion of spirits of turpentine and rosin produced from gum taken from trees on land embraced in an unperfected homestead entry, and acquired by the defendants from the homesteader with knowledge of the facts which made the turpentine operations on the land unlawful, and after it was informed that when the homesteader turpented the land he thought there was no law against his doing so. It was decided that the homesteader, having acted with full knowledge of the facts, was not excused by his mistake of law, and that the defendant could take no credit for the work and labor bestowed upon the turpentine by the homesteader, but must answer for its value as manufactured products. The fact that the instant case was brought in a court of equity does not keep the ruling in the cited case from being applicable. It is not disclosed that anything has occurred which, in a court of equity, would deprive the plaintiff of the right to enforce whatever liability the de-

defendants incurred by their wrongdoing. There is nothing to support a claim that it would be inequitable for the plaintiff to get what it would have been entitled to if it had brought an action at law based upon the same wrongful conduct. The damages recoverable at law for such wrongdoing are equally recoverable in a court of equity. *Guffey v. Smith*, 237 U. S. 101, was a suit in equity for an injunction, discovery and accounting, brought by the holder of an oil and gas lease against those who, under color of a later lease made by the owner, took oil and gas from the leased land. Part of the oil was taken while the defendants honestly believed that the lease they held was the only one on the premises, and part was taken after they were fully informed of the prior lease and of the complainant's claim based upon it. On the question of the liability of the defendants for oil taken after they were informed of the prior lease it was decided that they were not entitled to a deduction of the amount of expenses incurred in getting that oil. The following was said in the opinion:

"But the expenses incurred after August 1, 1907, are upon a different footing. On that date Sollers and his associates were actually and fully informed of the prior lease and of the complainant's purpose to insist upon the rights conferred by it and to obtain redress for the invasion of those rights, so that whatever was done thereafter cannot be regarded as anything less than a wilful taking and appropriation of the oil which was subject to the complainant's superior right."

As a trespasser's mistake of law does not, when he is sued at law, have the effect of entitling him to an allowance for the value of his labor expended in committing the trespass, and as the legal rule for measuring damages recoverable from a trespasser prevails in a court of equity in the absence of anything making it inequitable for that rule to be enforced in favor of the party seeking equitable relief, the contention in question cannot be sustained unless that result is required by the circumstance that the defendants acted in reliance on incorrect advice given by a lawyer. The circumstances attending the giving of that advice and the action of the defendants in pursuance of it are to be considered. The unlawful acts of the defendants in appropriating the land in question and taking valuable products therefrom were committed after the highest official of the executive department of the Government charged with the custody and protection of the public lands, acting under an asserted right to do so, and in the belief that the land in question contained valuable oil and gas which should be conserved, had publicly and formally adopted the policy of keeping that land in Government ownership and conserving whatever of value it contained until Congress, after being informed of its value or lack of value for oil and gas, should determine the disposition to be made of it, and, in promulgating the order evidencing the policy adopted, had unequivocally given to that order the meaning, which the language was capable of expressing, of forbidding such an appropriation of that land and its contents as the defendants were guilty of. The trespass complained of was committed after warning given by the owner. The defendants do not

claim that they acted in excusable ignorance of that warning. If they did not actually know that the withdrawal order was intended to prevent any appropriation of the land or its mineral contents it was because they intentionally or negligently failed to inform themselves of what was disclosed by official documents contained in the public files of the local land office. They either knew, or were negligent in not knowing, that the correctness of the legal advice under which they acted was controverted by the highest official representative of the public in the matter of protecting its rights in the land. They were not in the position of one who acts on the faith of legal advice the correctness of which he supposes to be acquiesced in by the party to be adversely affected by conduct in pursuance of it. The evidence is not inconsistent with the conclusion that the advice was sought with the disclosed purpose of finding an excuse for or justification of an already contemplated appropriation of the land in disobedience of the withdrawal order as construed by the official who made it. It was given under conditions conducive to partisan bias and to the vitiating influence of selfish motives. It was acted on with knowledge, or ample opportunity to be informed, of the conflicting views as to the right or lack of right of the defendants to do what they did. It was not unwittingly that they took the chance of their conduct being condemned as wrong and unlawful in the to be anticipated possible event of the legal views expressed by their counsel not prevailing over inconsistent ones known to be entertained by high officials who had no personal interest to be affected. We are not of opinion that, in the determination of the damages for which the defendants are liable because of their unlawful acts, the giving, under the circumstances disclosed, of the advice of counsel in pursuance of which they made mistakes of law which they claim influenced their conduct requires that those mistakes be given an effect or influence not accorded to the mistake of an occupant of public land included in his unperfected homestead entry in making an unlawful use of that land when he thought there was no law against his doing what he did, and, so far as appears, was unaware that anyone thought otherwise, nor to the conduct of the holder of an oil lease in taking oil from the leased land after he was informed that right to that oil was claimed by another under a prior lease made by the owner. We think the evidence adduced required the conclusion that the wrongful acts complained of were committed under such circumstances as forbid their being regarded as anything less than a wilful taking and appropriation of the plaintiff's property, with the result of depriving the wrongdoers of a right to be credited with the amount of expenses they incurred in taking the plaintiff's oil. Such a valid conservation measure as the one in question could not be expected to be at all effective if the erroneous advice of a lawyer as to its validity or meaning is given the effect of enabling a trespasser, with knowledge or ample opportunity to know that the correctness of that advice is officially and publicly controverted, to take and convert the things of value sought to be conserved and to contest the question of his liability without risking anything but the profit he would realize in the event of his being successful in the contest. A reason for the existence of the rule that ignorance of law does not excuse is that a

different rule is incompatible with the regulation of human conduct by law. A mistake of law made under the influence of advice of counsel given and acted on under such circumstances as those disclosed by the evidence in this case is within the reason of the rule mentioned, and is not within any recognized exception to or modification of that rule. To charge the Government with the amount of expenses incurred by trespassers in taking oil from public land validly withdrawn from appropriation is incompatible with the enforcement of the policy evidenced by the withdrawal order. To allow the credit claimed in behalf of the defendants would amount to paying them for doing what was legally forbidden.

A provision of the Louisiana Civil Code and decisions of the Supreme Court of that State are referred to in argument of counsel for the defendants in support of the contention that under the law of that State the defendants, in the circumstances disclosed, are liable only for the difference between the value of the oil produced and the cost of producing it. It is not necessary to determine the import of the State statutes and decisions relied on, as in this suit in equity by the Government for redress for an alleged unlawful appropriation of part of the public domain the relief grantable is not determined by local laws or rules of decision, but by general principles, rules and usages of equity having uniform operation in Federal Courts wherever those courts are sitting as courts of equity. The public domain is not at the mercy of State legislation or decisions. *Utah Power & Light Co. v. United States*, 243 U. S. 389; *Guffey v. Smith*, *supra*.

The amount for which the defendant corporation which got the oil became liable was not lessened by its payment of royalties to other defendants who were liable as co-trespassers. Trespassers cannot, by dividing the fruits of their wrongdoing, convert their joint liability for the whole into a several liability of each of them for only the share or part he got or retained.

It was not error to allow interest from the date of the master's report on the amount he found to be due at that time. Interest from that date was compensation for the withholding of the amount after the date it was found to be due.

For reasons above indicated the decree under review is affirmed in so far as it was in favor of the plaintiff, and is reversed in so far as it credited the defendants or any of them with the drilling and operating costs incurred, and the cause is remanded, with direction that the accounting and the decree be conformed to the views herein expressed.

Affirmed in part.

Reversed in part.

(Original filed May 17th, 1921.)

*Judgment.*

Extracts from Minutes of May 17th, 1921.

No. 3548.

SAM W. MASON et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

*Petition for Appeal and Order Allowing Same.*

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross appellees, Sam W. Mason, Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with super-



sedes, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

*Solicitors for said Appellants.*

*Order.*

Let the foregoing petition be granted, and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of One Hundred and One Thousand Dollars (\$101,000.00).

June 7th, 1921.

(Signed)

R. W. WALKER,

*Judge U. S. Circuit Court of Appeals.*

*Assignment of Errors.*

Filed June 9th, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

*First.*

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

*Second.*

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

**Third.**

The Court erred in holding defendants to be trespassers.

**Fourth.**

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

**Fifth.**

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

**Sixth.**

The Court erred in holding that defendants did not act in good faith.

**Seventh.**

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

**Eighth.**

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

**Ninth.**

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

**Tenth.**

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.



## Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

## Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

## Thirteenth.

The Court erred in not reversing the decree of the District Court which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.

## Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Wherefore, the defendants pray that the said decree be reversed, and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,  
S. L. HEROLD,  
*Solicitors for Defendants.*

*Appeal Bond.*

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON, LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN, Eugene Hanszen, Robert L. Strongfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, as

principal, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of One Hundred and One Thousand (\$101,000.00) Dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3548, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in said case; and the said Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs of they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed)

SAM W. MASON,

By S. L. HEROLD, *Atty.*

(Signed)

LYDIA HANSZEN MACMULLEN,

By S. L. HEROLD, *Atty.*

(Signed)

J. A. MACMULLEN,

By S. L. HEROLD, *Atty.*

(Signed)

EUGENE HANSZEN,

By S. L. HEROLD, *Atty.*

(Signed)

ROBERT L. STRINGFELLOW,

By S. L. HEROLD, *Atty.*

(Signed)

DILLARD P. EUBANK,

By S. L. HEROLD, *Atty.*

(Signed) J. B. STOCKLEY,  
 By S. L. HEROLD, *Atty.*  
 (Signed) C. F. GRIGGS,  
 By S. L. HEROLD, *Atty.*  
 (Signed) ELIZABETH MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) MARGARET MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) JOHN B. MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) W. C. MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) A. A. MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) A. D. MASON,  
 By S. L. HEROLD, *Atty.*  
 (Signed) GULF REFINING CO. OF LA.,  
 By S. L. HEROLD, *Atty.*  
 (Signed) AMERICAN SURETY COMPANY  
 OF N. Y.,  
 By CHARLES HOFFMAN,  
*Resident Vice-President.*

Attest:

(Signed) C. MURPHY,  
 [SEAL.] *Resident Assistant Secretary.*

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,  
*United States Circuit Judge.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 205 to 225 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3548, wherein Sam W. Mason and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 204, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the Exhibits forwarded to this Court in the original as per the stipulation of counsel copied at page 200 of the record herein, are herewith transmitted in the original to the Supreme Court of the United States.

(In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit Court of Appeals.*

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,  
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to — sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana are appellants and cross-appellees and the United States of America is appellee and cross-appellant, No. 3548 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Sam W. Mason and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

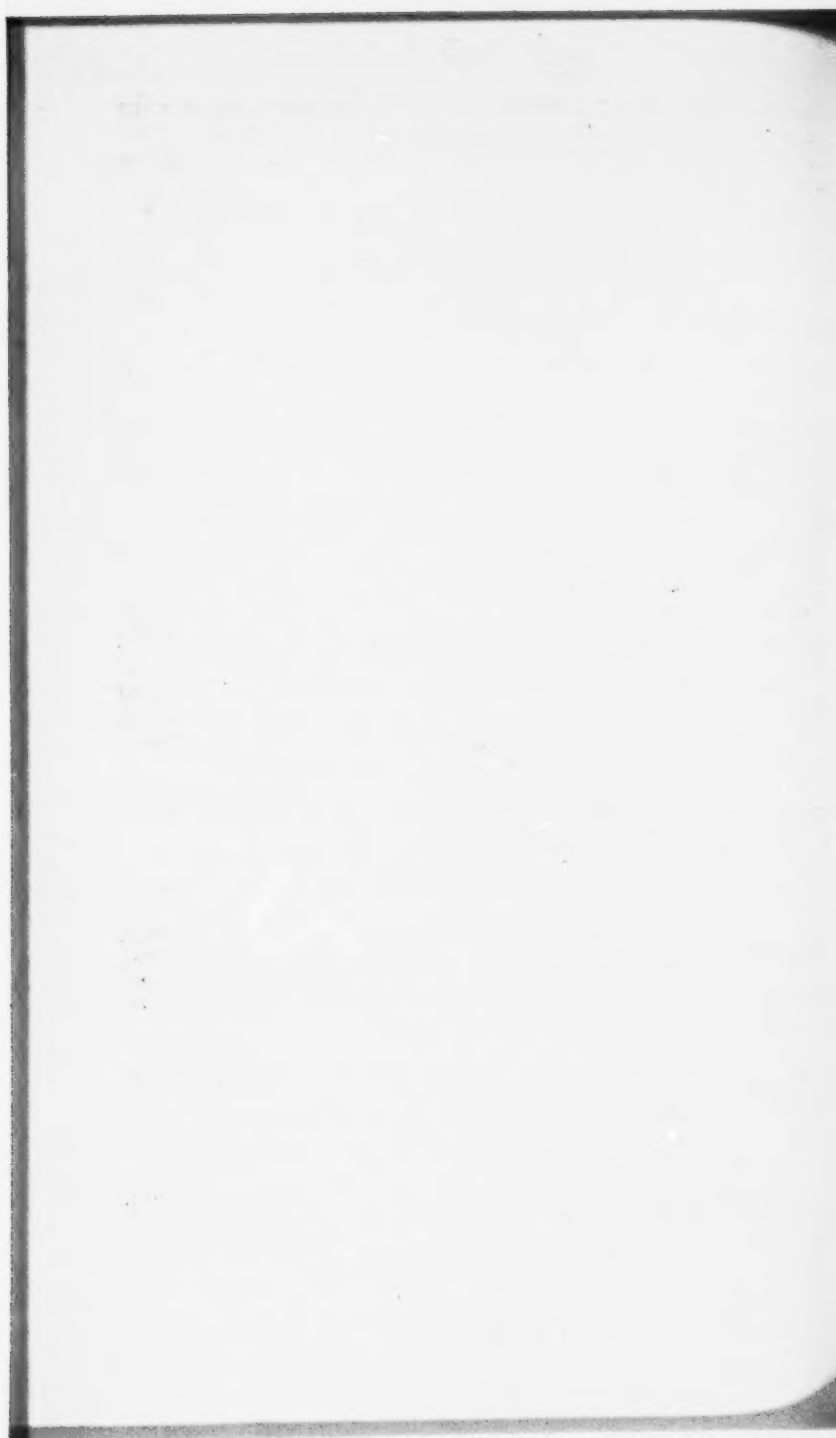
R. W. WALKER,  
*United States Circuit Judge.*

[Endorsed:] No. 3548. United States Circuit Court of Appeals, Fifth Circuit. Sam W. Mason et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,  
*Special Assistant to the Attorney General.*

Endorsed on cover: File No. 28354. U. S. Circuit Court Appeals, 5th Circuit. Term No. 399. Sam W. Mason, Lydia Hanszen MacMullen, Eugene Hanszen, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28354.



U. S. Supreme Court,  
**FILED**  
AUG 31 1922  
WM. R. STANSBURY  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1922.

SAM W. MASON, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 117.
DILLARD P. EUBANK, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
LYDIA H. McMULLEN, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 116.
W. H. MATTHEWS, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
HENRY HUNSICKER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 104.
B. R. NORVELL, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
E. G. PALMER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 111.
ARKANSAS NATURAL GAS COMPANY <i>vs.</i> UNITED STATES OF AMERICA.		

Appeals from the Circuit Court of Appeals for the Fifth Circuit.

**ORIGINAL BRIEF ON BEHALF OF DEFENDANTS  
AND APPELLANTS.**

D. EDW. GREER, R. L. BATTS, HAMPDEN STORY,	S. L. HEROLD, J. A. THIGPEN, E. P. LEE, <i>Solicitors for Appellants.</i>
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IN THE  
**Supreme Court of the United States**

**OCTOBER TERM 1922.**

SAM W. MASON, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 117.
DILLARD P. EUBANK, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 115.
LYDIA H. McMULLEN, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 116.
W. H. MATTHEWS, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 114.
HENRY HUNSICKER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 104.
B. R. NORVELL, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 113.
E. G. PALMER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	} No. 111.
ARKANSAS NATURAL GAS COMPANY <i>vs.</i> UNITED STATES OF AMERICA.	} No. 112.

Appeals from the Circuit Court of Appeals for the Fifth Circuit.

**ORIGINAL BRIEF ON BEHALF OF DEFENDANTS  
AND APPELLANTS.**

## STATEMENT.

These suits all involve the validity of mineral locations made by the several defendants, the contention of the Government being that such locations were illegal, and that the defendants are liable as trespassers for the value of the oil extracted from the several parcels of land involved in the different suits. This contention is made on the part of the Government, because of the fact that each of such locations was made subsequent to December 15, 1908, on which date an executive order was issued, the effect of which, according to the Government's contention, was to withdraw these lands from location under the placer mining laws.

In each of the cases, it is conceded that on and before the date of the Presidential order referred to, the several tracts affected by the different suits were public lands of the United States, the defendants claiming that the locations made by them under the placer mining laws subsequent to December 15, 1908, were authorized by law and entitled them to drill upon such properties and to extract oil therefrom; and that in making the locations and in drilling for and extracting oil from the properties covered thereby, they acted in good faith, under the advice of competent counsel.

Upon the issues raised by the pleadings, the cases were referred to a master, who, after hearing the testimony, reported to the district judge (Record, No. 117, page 153) his recommendation that the mineral locations be held void, and upon his finding that the defendants had acted in entire good faith, recommended judgment against the various defendants for the value of the oil extracted from the several tracts, less

the cost of production. Other recommendations peculiar to particular cases, will be treated later.

Exceptions (Record, No. 117, pages 173, et seq.) filed by both plaintiff and defendant were overruled by the district judge (Record, No. 117, page 169) who entered a decree (page 179) in accordance with the recommendations of the master.

Appeal was taken from this decree in each case by the defendants therein and cross-appeals by the United States. The Circuit Court of Appeals affirmed the decrees of the district court on the appeals, but on the cross-appeals reversed them, holding the defendants wilful trespassers on the public domain and adjudging them liable for the full value of the oil extracted without allowance for the cost of production. From this decree of the Circuit Court of Appeals, the defendants in each case have prosecuted appeals.

As a matter of convenience to the Court and counsel, these cases will be argued in one brief; the Mason case (No. 117) having been agreed upon as typical of the issues involved, common to the several cases. That is to say, the Mason case will be first discussed in this brief, after which each of the other cases will be considered, without repetition of the arguments made in the Mason case. By so doing, we trust the consideration of the cases will be made less laborious to the court.

The errors assigned by the defendants in the Mason case (those in the other cases being substantially identical) are as follows (Record, page 187);

### ASSIGNMENTS OF ERROR.

*First.* The court erred in holding that the executive order of December 15, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

*Second.* The court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

*Third.* The court erred in holding defendants to be trespassers.

*Fourth.* The court erred in holding that defendants are liable for the value of the oil extracted from the property.

*Fifth.* The court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

*Sixth.* The court erred in holding that defendants did not act in good faith.

*Seventh.* The court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

*Eighth.* The court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the master and the district judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

*Ninth.* The court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

*Tenth.* The court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

*Eleventh.* The court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

*Twelfth.* The court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana, according to the Code or the settled jurisprudence of that State.

*Thirteenth.* The court erred in not reversing the decree of the District Court, which refused to deduct as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.



*Fourteenth.* The court erred in allowing interest from the date of the master's report.

*Fifteenth.* The court erred in not reversing the judgment of the district court which had condemned defendants *in solido* in a sum greater than the difference between the value of the oil extracted from the property and the actual cost, as found by the master and the district court, of the production of such oil.

### ARGUMENT.

On March 26, 1910, Sam W. Mason and W. W. Mason, availing themselves of the provisions of the act of Congress of February 11, 1897, filed a notice of mining location on the 20 acres of land affected by this suit (Record, page 7), and in accordance therewith, took possession of the property and had drilling operations started on April 16, 1910. This well was completed on May 29, 1910, as a producer of oil.

The act of February 11, 1897, above referred to (29 Stat. at Large 526) is as follows:

"That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mining claims."

Section 2329, Revised Statutes provides that:

"Claims, usually called 'placers' \* \* \* shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims.";

with reference to which, Section 2325 of the Revised Statutes provides that location and discovery entitles the locator to a patent to the land after statutory proof, upon payment to the proper officer of five dollars per acre.

These statutes are but detailed expressions of the policy embraced in the act of May 10, 1872, carried into Section 2319 of the Revised Statutes:

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law."

Furthermore, it is settled law that the right acquired by location and discovery, even without patent, is a property right and subject only to the defeasances possible through non-compliance with provisions of the statutes relative to the annual assessment work to be performed by the locator, and is a title even as against the Government.

*Union Oil Company v. Smith*, 249 U. S. 349, and cases there cited:

"Even without patent, the possessory right of a qualified locator after discovery of minerals upon the claim is a property right in the full sense \* \* \* and it is capable of conveyance, inheritance or devise."

By act of June 25, 1910 (36 Stat. at Large, 847), the President was authorized to

"temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States."

Section 2 of the act contains the following proviso:

"That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a *bona fide* occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act."

Pursuant to this statutory authority, President Taft, on July 2, 1910, (Record, page 143) withdrew all public lands in the township within which the lands in question are located from "settlement, location, sale or entry."

*At this last named date, however, as we have seen, discovery of oil had already been made and oil was being diligently produced therefrom. Therefore, unless some legal impediment existed to the initiation of a valid location at the date at which it was made by the Masons, their location was a valid one, and must be so decreed by this Court.*

It is the contention of the Government that this legal impediment did exist, by reason of the issuance on December 15, 1908, of an order (Record, page 132), the effect of which the Government contends was to withdraw the land in question from mineral location.

The first question to be considered, therefore, is whether such withdrawal order had the effect contended for by the Government.

### I.

By stipulation (Record, page 200), Bulletin No. 623 of the United States Geological Survey, which was offered in evidence by both parties, entitled "Petroleum Withdrawals and Restorations Affecting the Public Domain," is sent up to this court in the original. In this bulletin, made part of the record in this case, will be found the full history of the order in question. Much of this bulletin is also copied in the transcript.

These official records show that on October 24, 1908, the Director of the Geological Survey addressed a letter to the Secretary of the Interior, in which, after reciting the history of the so-called "wild wells" in Caddo Parish, and after an apparently extravagant statement as to the quantity of gas being wasted, he suggested that for the purpose of conserving such natural resources, the Government should take some action. As a practical means of arriving at the action to be taken by the Government, he suggests "that if any Federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste." (Bulletin 623, page 113; also Record, pages 135-138).

On November 6, 1908, the Director addressed a second communication to the Secretary of the Interior, referring to his previous letter, and advising that he had caused a search to be made by the General Land Office to determine what lands remained in Federal ownership in the neighborhood of the oil field. In this letter (Bulletin, page 115; Record, page

139), he gives a detailed list of all of the lands apparently remaining in the ownership of the United States within the several townships named in the withdrawal order later issued, and relied on here by the Government.

This list shows that the Government claimed the ownership of only small isolated tracts in the various townships involved. For example, in Township 20 North, Range 16 West, in which the land affected by these suits is situate, there are named (Record, page 140) only two tracts, each of 40 acres, and located in different sections.

The Director continues:

"Among these lands, that located in Township 20 North, Range 16 West, and comprising the N. E.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$ , Section 1, as well as S. W.  $\frac{1}{4}$ , S. W.  $\frac{1}{4}$ , Section 3, are clearly within the known productive area of this oil and gas field. The waste of natural gas referred to in my previous letter on this subject constitutes an evident drain upon the mineral resources of the public domain. If permitted to continue it will inevitably destroy the mineral value of this public land, and render it worthless in a comparatively short time."

On this account he recommends an injunction against further drilling in the Caddo field until effective measures are taken to stop the waste of gas, etc.

The letter thus concludes:

"I have the honor to further recommend that all the land described herein be withdrawn for entry  
PENDING THE INVESTIGATION NOW UNDER  
WAY AS TO THEIR VALUE FOR OIL AND

GAS and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry."

It will also be noted that in each of these townships the government claimed the ownership of only small and isolated tracts and that the Director recognized the fact that the escape of oil or gas from any part of the field would cause drainage throughout the whole field, and that the withdrawal which he recommends is one merely "pending the investigation now under way as to their value for oil and gas."

In response to these letters of the Director, on December 15th, 1908, an executive order of withdrawal was issued (Record, page 132) as follows:

"To secure the public interests, and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from *settlement and entry, or other form of appropriation.*"

Many withdrawal orders had therefore been issued; all of them, in so far as they relate to oil lands, being set out in Bulletin 623. But this court will search the record of these withdrawals in vain to find where, until long after December 15th, 1908, the executive had ever attempted to withdraw oil and gas lands from *location under the placer mining laws*; every such order prior thereto containing specific provision to the effect or otherwise unequivocally indicating the withdrawal to be from agricultural or other similar entry, *for the*

*purpose of protecting the lands from appropriation under any laws other than those governing the location of placer mining claims. Nor was it until the withdrawal order of President Taft of September 27th, 1909, considered in the *Midwest case*, 236 U. S. 467, that the executive ever declared his purpose to withdraw lands from mineral location.*

Since it was not until 1909 that any withdrawal order ever issued purporting to withdraw lands from mineral location, and since every withdrawal prior to the one in controversy specifically withdrew from appropriation only under the *non-mineral* laws, it would seem clear that there is nothing in the government's contention that this withdrawal must *necessarily* be construed to prohibit the making of mining locations; and that such was not its purpose nor scope nor effect clearly follows from settled rules of construction, as well as from its accompanying facts and from the history of the withdrawal itself.

*(a) It is settled jurisprudence that none of the provisions of the acts of Congress relative to public lands apply to lands containing minerals; but that such class of lands is treated of under separate statutes and by different rules. Indeed in the arrangement of the Revised Statutes the rules relative to the acquisition of mineral lands are grouped in a chapter entirely separate from those concerning the acquisition of public lands in general.*

*In United States v. Sweet, 245 U. S. 567:*

*"In the legislation concerning the public lands it has been the practice of Congress to make a distinction between mineral lands and other lands, to deal with them along different lines, and to withhold mineral lands from disposal save under laws specially*

including them. \* \* \* These acts (those relative to mineral lands) were carried into a chapter of the Revised Statutes entitled 'Mineral Lands and Mining Resources.' Taken collectively they constitute a special code upon that subject and show that they are intended not only to establish a particular mode of disposing of mineral lands, but also to except and reserve them from other grants and modes of disposal where there is no express provision for their inclusion."

This case and those therein cited establish that a provision in a statute or in an executive order relative to the disposal of *public lands* refers only to the ordinary forms of disposal; that is, under the non-mineral laws unless there be something in the statute or in the order referring to *mineral lands*, either expressly or by necessary implication.

The same principle must be applied to a withdrawal, particularly since the right of any qualified citizen to appropriate lands under the mineral laws was a statutory right, the power of the executive to interfere with which was at all times a matter of grave doubt, and one which in terms was attempted to be exercised first in 1909, and then by a president who at the time publicly expressed his own doubt as to his power to make such withdrawal.

Certain it is that without clear and unambiguous legal authority the right to acquisition under the mineral laws cannot be denied to any citizen of the United States, in view of the provisions of *Section 2319* of the Revised Statutes:

"All mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are



hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States."

Now let us see whether in the light of the statutes and of the jurisprudence, the withdrawal order is susceptible of the construction sought by the government.

The order does not withdraw from "any appropriation" or from "all forms of appropriation." It specifically withdraws from "*settlement and entry or other form of appropriation.*" "Settlement and entry," however, is a phrase applicable only to acquisition under the laws providing for the obtaining of homes on government land—that is, the homestead and pre-emption laws. A "settlement" is, of course, made by a "settler" by the act of "settling." The word implies the establishment of permanent relations, of fixed conditions, of establishment. See the various dictionaries.

In *Melvin v. United States*, 151 Fed. 177, 80 C. C. A. 545, it was held that under the provisions of the homestead laws and the rules of land office, the term "settlers" could apply only to those "persons who have attached themselves permanently to the soil."

"A settler upon land is one who resides thereon as his home."

*Smith v. Florence*, 96 S. W. 1096. By the terms "settlement and entry," therefore, the executive must have intended only those modes of initiating title to the land connected with and growing out of actual settlement—that is, entries under

the homestead and preemption laws, the initial step in which is the filing in the proper land office. The word "entry" has a well defined legal signification.

"It means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer known in the legislation of several states by the epithet of an entry-taker, and corresponding very much in his functions with the registers of land offices, under the acts of the United States. In the natural progress of language, the term has been introduced into the laws of the United States; and, by reference to those laws, we think the meaning of the term will be found to be distinctly confined to the appropriation of lands under the laws of the United States at private sale."

*Chotard, et al, v. Pope, et al.*, 12 Wheaton 588. The withdrawal from "settlement and entry," therefore, could have meant only the withdrawal from those methods of acquiring an inceptive right to public lands arising out of the acquiring of a domicile on the land and the filing of the necessary papers in the land office—such, for example as the familiar method of acquisition known as homesteading.

The contention of the Government, therefore, necessarily depends upon the argument that the accompanying words "or other form of appropriation" can be broadened into a term susceptible of such construction as to include "mineral locations."

But, as we have noted, the order does not withdraw from "any appropriation," but from "settlement and entry or other form of appropriation." However broad might have been the

meaning of the word "appropriation" if the withdrawal had been from "*any appropriation*" or from "*all forms of appropriation and entry*," yet when this term is preceded as here by the phrase "*settlement and entry*" and coupled with them by the word "*other*," it must necessarily follow that the meaning of the phrase is limited to those forms of appropriation similar to or growing out of the same general laws as those under which settlement and entry are made. In other words, it must be considered as if it read "*or other similar form of appropriation*" or "*other such like form of appropriation*": that is to say, appropriation through some form of entry under the general land laws.

We have seen that the provisions of the law relative to the acquisition of mineral lands are of a character entirely different from those relative to the acquisition of public lands generally: this difference being emphasized in their being carried into separate chapters of the Revised Statutes. They are different codes of law, governed by different principles, and different terminology is employed for the modes of acquisition under the two systems.

The inception of the right to mineral lands is by "location," whereas under the non-mineral laws it is by "settlement and entry," or "purchase." And "entry," as said in *Chotard v. Pope, Supra*:

"is an act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country by the filing of his claim with the proper officer of the land office."

A location, however, is not an entry, for it in no way depends upon the filing in the land office, nor is the payment

of any fee, nor the making of any purchase incumbent upon the locator to vest in him property rights.

"A location is the act of appropriating a parcel of land according to certain established rules. It usually consists in placing on the ground, in a conspicuous position, a notice setting forth the name of the locator, the fact that it is thus taken or located, with the requisite description of the extent and boundaries of the parcel, according to the local customs, or, since the Statute of 1872, 17 Stat. at L. 91, according to the provisions of that act. \* \*

\* The location, which is the act of taking the parcel of mineral land, in time became among the miners synonymous with the mining claim originally appropriated. So, now, if a miner has only the ground covered by one location, 'his mining claim' and 'location' are identical, and the two designations may be indiscriminately used to denote the same thing."

*St. Louis Smelting Company v. Kemp*, 104 U. S. 636. Section 2319 extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits and this and the following sections hold out to one who succeeds in making the discovery the promise of a full reward. Those who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose, are not treated as mere trespassers, but as licensees or tenants at will. For since, as a practical matter, exploration must precede the discovery of minerals, and some occupation of the land ordinarily is necessary for adequate and systematic exploration, legal recognition of the *pedis possessio* of a *bona fide* and qualified prospector is universally regarded as a

necessity. \* \* \* If he locates, marks and records his claim in accordance with Section 2324 and the pertinent local laws and regulations, *he has, by the terms of Section 2322, an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals even to exhaustion, without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the fee.* \* \* \*

"If not content to rest upon the right conferred by Section 2322, the qualified locator may obtain a patent for his claim by complying with the conditions prescribed by Sections 2325 and 2326.

*"But, even without patent, the possessory right of a qualified locator after discovery of minerals upon the claim is a property right in the full sense, unaffected by the fact that the paramount title to the land is in the United States.*

*Union Oil Company v. Smith*, 249 U. S. 337 (349). It is thus apparent that whereas "settlement and entry" implies an entry based upon a permanent settlement, and whereas entry itself depends entirely upon the filing in the proper land office and upon the initiation of contractual relations with the government, the location of a mining claim involves necessarily neither "settlement" nor "entry." For the miner only takes possession of the land for the purpose of working it for its mineral deposits and, rarely if ever, for a home. He need make no entry of any kind, for the statute is a continuous invitation to him to retain possession and to work the property, and the discovery of minerals without any filing in the land office and without any application of any character to the government or its officials vests in him a complete property

right of which he cannot be deprived by the government itself. Consequently, it is the "discovery" that makes the location, and not the "entry." And for this reason the words "other form of appropriation" coupled with the term "settlement and entry" by the conjunctive "or" cannot be construed to cover a withdrawal from mineral location.

In *United States v. Berans*, 3 Wheat. 390, the question at issue was whether a murder committed on a ship of war of the United States was within the jurisdiction of the Federal Court under a statute reading as follows:

"That if any person or persons shall, within any fort, arsenal, dockyard, magazine, or in any other place, or district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of wilful murder, such person or persons, on being thereof convicted, shall suffer death."

Though it was beyond dispute that a ship of war of the United States was "a place within the sole and exclusive jurisdiction of the United States", nevertheless the court held that the crime there committed was not within the purview of the statute. In the opinion by Chief Justice Marshall it was said:

"The objects with which the word 'place' is associated, are all, in their nature, fixed and territorial. A fort, an arsenal, a dock-yard, a magazine, are all of this character. When the sentence proceeds with the words, 'or in any other place or district of country under the sole and exclusive jurisdiction of the United States' the construction seems irresistible that, by the words 'other place', was intended another place of a similar character with those previously enumerated, and with that which follows."

In *United States v. Chase*, 135 U. S. 255, it was held that knowingly to deposit in the mails an obscene letter, enclosed in an envelope or wrapper upon which there was nothing but the name and address of the person to whom the letter was written was not an offense within the act of July 12th, 1876, making it a crime to deposit in the mails "any obscene, lewd or lascivious book, pamphlet, picture, paper, writing, print or other publication of an indecent character, etc."

It was contended on the part of the United States that the term "writing" was comprehensive enough to include the offense charged and also that the words "other publication" was broad enough to cover the offense. But under the rule of construction consistently followed by the Court, as well as under the history of the act, the statute was held not broadened by the use of these terms which referred only to similar documents as those specifically referred to:

In 36 Cyc., page 1120, it is stated:

"The particular words are presumed to describe certain species and the general words to be used for the purpose of including other species of the same genus. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their restricted sense they would have made no mention of the particular classes. The words 'other' or 'any other' following an enumeration of particular classes are therefore to be read as 'other such like' and to include only others of like kind and character."

The application of this rule of construction would seem to settle the case, and it must be applied unless by so doing the

order is given meaning different from that intended by the executive.

"Its proper office is to give effect to the true intention, not to defeat it."

*Danciger v. Cooley*, 248 U. S. 319. Or, as stated in *United States v. Mescall*, 215 U. S. 31, it is to be applied unless "the particular words exhaust the *genus* so that there is nothing *ejusdem generis* left."

But in this case, as we have seen, there are various forms of appropriation other than those by entry and settlement, falling under the operation of the generalland laws.

But intrinsic evidence in the withdrawal itself, comparison with other withdrawal orders theretofore and thereafter issued, and the reading of it "in the light of public documents embodying the history of the transaction of which the court may take judicial notice" (236 U. S. 485), demonstrate conclusively that the withdrawal order was not intended to have the effect of prohibiting acquisition under the mining laws. And this intention entirely concurs with the construction given to the withdrawal by the application of the rule *ejusdem generis*.

### THE PURPOSE OF THE WITHDRAWAL.

(b) The Director of the Geological Survey in his letter to the Secretary of the Interior of date November 6th, 1908, *Bulletin 623*, page 116, recommends:

"That all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas."





Now why should lands be withdrawn "pending an investigation as to their value for oil and gas?" The answer is obvious that the lands may be classified as "mineral" or "non-mineral." If found to be non-mineral, that no inceptive rights be permitted to attach to the property which might be shown by such later investigation to be mineral lands. This had been the expressed purpose of every similar withdrawal previously issued. \*

In the first withdrawal of record (in 1865) the suspension is on account of the fact, as stated by the Commissioner that:

"It is not the policy of the Government to deal with petroleum tracts as ordinary public lands, any more than with auriferous or other mineral or saline lands."

and every withdrawal order found in said Bulletin 623, which bulletin purports to contain all withdrawal orders relative to petroleum ever issued, proceeded substantially from the same policy as that stated in the withdrawal of April 6th, 1901, (Bulletin, page 66):

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- \*Withdrawal September 14th, 1908, California, Bulletin, page 110.
  - Withdrawal August 25, 1908, California Bulletin, page 108.
  - Withdrawal July 10, 1908, California Bulletin, pages 107-108.
  - Withdrawal June 17, 1908, California Bulletin, page 105.
  - Withdrawal August 15, 1908, California Bulletin, page 103.
  - Withdrawal June 3, 1907, California Bulletin, page 101.
  - Withdrawal October 21st, 1902, Oregon, Bulletin, page 75.
  - Withdrawal July 21st, 1902, Oregon, Bulletin, page 73.
  - Withdrawal November 13th, 1901, Oregon, Bulletin, page 70.
  - Withdrawal November 8th, 1901, Oregon, Bulletin, page 69.
  - Withdrawal November 4th, 1901, California, Bulletin page 69.
  - Withdrawal October 7, 1901, Oregon, Bulletin, page 67.

"The vacant lands in the following description are *suspended from agricultural entry to permit investigation of their alleged mineral character*; \*

a phrase almost identical with that used in the recommendation of the Director in the instant case "that all the land described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas."

Certainly this is all that the Director of the Geological Survey had in mind and there is no evidence that the President had in view any purpose for his order different than that actuating every previous withdrawal issued from 1865 up to that date.

The first withdrawal order ever issued prohibiting the acquisition of petroleum land under the *mining laws* was that of President Taft, affecting California and Wyoming, September

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\*Withdrawal May 28th, 1907, California, Bulletin, page 101.

See restorations pages 89 et seq., relating to the previous withdrawals.

Withdrawal of November 17, 1903, Oregon, Bulletin, page 89.

See letter October 13, 1903, Bulletin, page 88.

See letter of Commissioner, August 18, 1903, Bulletin, page 87.

Withdrawal April 1st, 1903, Wyoming, Bulletin, page 83.

Withdrawal March 21, 1903, Wyoming, Bulletin, pages 82 and 83.

Withdrawal March 16, 1903, Wyoming, Bulletin, page 81.

Withdrawal December 30th, 1903, Wyoming, Bulletin, page 77.

Withdrawal September 27th, 1901, Wyoming, Bulletin, page 66.

Withdrawal April 6th, 1901, California, Bulletin, page 65.

Withdrawal March 7, 1900, California, Bulletin, page 64.

Withdrawal December 19th, 1900, California, Bulletin, page 63.

Withdrawal November 10th, 1900, Wyoming, Bulletin, page 63.

Withdrawal September 5th, 1900, California, Bulletin, page 62.

Four withdrawals, California, page 62, February 28th, August 11th, August 11th and August 28th, 1900, respectively.

Withdrawal March 17, 1865, California, page 60.

27th, 1909, and which was the subject of adjudication in the *Midwest* case. The language and history of the withdrawal order in this case are significant. The radical difference between the terms of the withdrawal there issued and the one now before the court deserve pointing out.

*Terms of the Withdrawal Order of December 15, 1908.*

To conserve the public interest, and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana are, subject to existing valid claims, withdrawn from *settlement and entry, or other form of appropriation.*

*Terms of the Withdrawal Order of September 27, 1909.*

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of *location, settlement, selection, filing, entry, or disposal under the mineral or non-mineral public land laws.* All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

As to the reasons for and the history of the withdrawal of September 27th, 1909, the court will note from the bulletin of the Geological Survey, pages 133, 134 and 135, as well as from the reading of the decision of the *Midwest* case (236 U. S. 486 *et seq.*) that that particular withdrawal was not made for the purpose of classifying lands but for the purpose of *preserving oil for the navy* and furthermore that the order of the President proceeded under advice from the Acting Secretary of the Interior (Bulletin, page 149), that all "California and Wyoming petroleum withdrawals heretofore made *permit mining locations;*" this advice being in answer to a telegram from Secretary Ballinger asking for the scope of previous withdrawal orders (page 135).

It will also be noted that as late as June 22, 1909, there were withdrawn in California large tracts of land expressly from

*agricultural* entry because of the fact that the land had been classified as "oil land," (Bulletin, page 132). See also similar withdrawals of date July 26th, 1909, relative to Wyoming, made pursuant to recommendation of the mineral inspector that the land be withdrawn "pending examination and classification as to the mineral character of the lands." (Bulletin, page 132).

The history of this particular withdrawal, therefore, as well the study of all other withdrawals and a comparison of this order with that involved in the *Midwest* case demonstrates that not only can the language of the order not be susceptible of construction as a prohibition of mineral locations, but that the purpose and intention of the executive was solely to prevent the acquisition of rights to mineral lands under the non-mineral laws.

Furthermore from the facts shown by the record it would seem necessarily to follow that the withdrawal order could not have been intended as an inhibition against drilling upon the several tracts belonging to the government included in the order.

As we have before noted, the entire purpose of this withdrawal was to conserve the gas supply of the Caddo field. It originated in the report as to the waste of gas in that field, and the recommendations of the Director of the Geological Survey all proceeded from his desire to assist in the conservation of such natural resources. The Director knew and so states in his letter of November 6th, 1909 (Bulletin, page 115) that the escape of gas in any part of the oil field causes a drainage generally throughout the producing area, and that such waste (from lands in private ownership) if permitted to

continue would "inevitably destroy the mineral value of this public land." In so doing he was but referring to the principle universally recognized by the courts, *Ohio Oil Company v. Indiana*, 177 U. S. 200, that:

"No one owner of the surface of the earth, within the area beneath which the gas and oil move can exercise his right to extract from the common reservoir, in which the supply is held, without to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners."

The Director's recommendations, therefore, proceeded from the idea of conserving the supply of oil and gas supposed to be contained beneath the several tracts of land specifically described in his letter of recommendation.

As before pointed out, the tracts then claimed by the government and specifically described in the Director's letter were isolated tracts, mostly of small acreage themselves; all the land then claimed in Township 20 North, Range 16 West, being two "forties," a mile and a half apart. It was in Township 20 North, Range 16 West, that the waste occurred and it was as to this township in particular that attention was directed.

The Director knew and the Secretary knew that any proprietor of privately owned lands adjacent to these governmentally owned tracts had the right, of which he could not be deprived, of drilling on his own land. Furthermore they knew that such private owner had the right to drill at any

place upon his own land, no matter how close his wells might be placed to the land of the government, and that he might drill as many wells along the boundary line as he might see proper. They also knew that by this process *the private owner could drain the publicly owned tracts of their mineral content and thereby utterly destroy their mineral value.* They also knew that by prohibiting drilling upon these governmentally owned areas of public land they could not be conserving their mineral resources because such prohibition would not prevent the drainage from such land of the oil and gas therein contained through drilling upon adjacent tracts. They also knew that *the only possible manner in which the mineral resources of these isolated areas could be conserved would be by drilling on these tracts themselves* and of securing the oil therefrom before it could be obtained by drainage from adjacent tracts.

How then could it have appealed to anyone's intelligence that prohibition of drilling on these isolated tracts would conserve their mineral resources?

Bear in mind the fact that this withdrawal was not, as in the California and Wyoming cases, for the purpose of preserving the oil in large bodies of land for the use of the navy, but was actuated by two purposes, first, to prevent the initiation of rights to mineral lands under the non-mineral laws; and, second, to conserve the natural resources of Northwest Louisiana and, incidentally, to prevent the waste of the mineral contents of the several tracts of public land remaining.

*But the only manner in which the oil and gas properties of the public land might have been conserved without drilling on those*

*tracts would have been by the prevention of drilling generally throughout the field; and such action was beyond the power of the Federal Government.*

This being so, the only way in which the oil and gas could have been put to beneficial use was by subjecting such areas to mineral location and, through such location, securing the drilling upon the land and the extraction of oil therefrom. If they could not be so used, then the tracts in a short time would become worthless, without benefit to anyone but the private owners within the field.

It would seem to jump to the eye, therefore, that the withdrawal could not have been intended to prevent the exercise of the legal right under *Section 2319 of the Revised Statutes* to extract oil from the several small tracts affected by the order.

It is respectfully submitted that, whether tested by settled rules of construction, by the history of the withdrawal, by its declared object and purpose, or by comparison with other withdrawals previously and subsequently issued, the order of December 15th, 1908, could not have been intended to and did not have the effect of preventing the extraction of oil from the several tracts here involved under the provisions of the placer mining laws.

## II.

*But if the Court should hold that the withdrawal of December 15, 1908, did operate to prevent the acquisition of rights under mineral locations, then the measure of damages recoverable by the Government from the several defendants who have extracted oil from the property in controversy is the value of the oil in place;*

that is to say, its value when produced less the entire cost of production.

The District Court adjudged that the several defendants who had produced oil from the tracts involved in these suits were in good faith in their operation of the properties; and, therefore, under the settled rule (*Bolles Wooden Ware Company v. United States*, 106 U. S. 432; *Guffey v. Smith*, 237 U. S. 118; *United States v. St. Anthony Railroad Company*, 192 U. S. 542), held that in the admeasurement of damages recoverable by the Government there was to be deducted from the value of the oil produced the cost of drilling and of operating the wells which produced such oil. This, on the theory that the defendants being in good faith, were liable to damages only for the value of the oil "at the time and at the place" where severed; that is to say, its value in the ground; such value being the cost at the mouth of the well, less the cost of production.

If the defendants were in good faith, such, of course, is the measure of damages under universal jurisprudence.

The Circuit Court of Appeals, however, reversed the concurrent finding of the master and of the district judge, held the defendants wilful trespassers, and hence, under the rule in *Bolles Wooden Ware Company v. United States*, 106 U. S. 432, and the line of decisions following same, liable in damages for the value of the oil after extraction without any allowance for the cost of its production.

#### **CIRCUMSTANCES UNDER WHICH THE LOCATIONS WERE MADE.**

There is no conflict whatever as to the facts surrounding the making of the locations in question.



That the lands in controversy were all government lands and free and open to occupancy and exploration and to the extraction of oil and gas, prior to the withdrawal order of December 15, 1908, is admitted.

In the Mason case, No. 117, agreed upon as the typical case, the location in question was made on March 26, 1910 (Record 6 and 36). The drilling operations were begun on April 16, 1910 (Record 37), and the well completed as a producer of oil in paying quantities on May 29, 1910 (Record 37). All the acts, therefore, essential for the perfection of the mineral location were completed prior to the act of June 25, 1910, and to the withdrawal thereunder on July 2, 1910.

Under these circumstances, the only possible bar that might have existed to the appropriation of the land under the Placer Mining Law and to the extraction of oil by virtue of such location, was the effect of the presidential order of December 15, 1908.

Prior, however, to making the location, Mr. Mason was advised by counsel that he had the right to initiate a mineral location on the property, notwithstanding such order, and to complete it by the discovery of oil.

There is absolutely nothing in the record purporting to impugn the truth of Mr. Mason's statement (Record, page 87 and 88) that he was advised by counsel that he had the legal right to make his mining location. Nor is there a scintilla of evidence in the record to impugn the good faith of his counsel who advised him that the President had no authority to withdraw lands from mining location, and that the withdrawal order of December 15, 1908 did not purport to prevent such locations.

But it is a matter of common knowledge that, at that time, in the opinion of the majority of the bar of the United States, the Executive had no authority to withdraw lands from location under the mining laws. It was only in the decision in the *Midwest* case by this court that such authority of the President was maintained, and then not upon any express grant of power but upon the ground of an implied power resulting from a long-continued practice of the executive with the tacit acquiescence of Congress.

As before pointed out, the location was perfected by the discovery of oil in May 1910.

In the *Midwest* case, in which the presidential authority was sustained by this court, the decision of the district judge had been against the existence of power on the part of the President to withdraw public lands from mining location. On the Government's appeal, the Circuit Court of Appeals did not decide the case, but certified it to this court for instructions. It was originally argued before this court in January, 1914; was assigned thereafter for re-argument; was reargued on May 7, 1914, and not decided until February 23, 1915, and then by a divided court, Mr. Justice Day, Mr. Justice McKenna and Mr. Justice Vandevanter dissenting.

Until the rendition of that decision, it may conservatively be said that at least a very large proportion of the bar entertained the opinion that the President did not possess the authority exercised by him and sustained in that case; the distinguished jurist, who then was President, himself doubting his authority in the premises:

"The message of the President of January 15, 1910, indicated that he doubted his authority to make such

withdrawals. In that message \* \* \* he said: \*  
 \* \* 'This power has been exercised in the interest  
 of the public with the hope that Congress might  
 affirm the action of the Executive by laws adapted  
 to the new conditions \* \* \* It seems to me  
 that it is the duty of Congress now by statute to  
 validate the withdrawals that have been made  
 \* \* \* and to authorize the Secretary of the  
 Interior temporarily to withdraw lands pending sub-  
 mission to Congress of recommendations as to legis-  
 lation to meet the conditions or emergencies as they  
 arise.' " 236 U. S. 507.

And there is no doubt that it was this frankly expressed doubt of Mr. Taft which was the moving cause of the passage of the act of June 25, 1910 under which, for the first time, express authority to withdraw land from appropriation under the mineral laws was conferred upon the President. When the distinguished Executive, the validity of whose withdrawal order was involved in the Midwest case, himself expressed grave doubt as to his power, when the trial courts denied the existence of that power, when its doubt moved the Circuit Court of Appeals to certify the question to this Court, and when after two arguments in this Court the President's authority was sustained by only five of the Justices, and when three of the learned Justices of this Court considered the matter of such import as to necessitate a vigorous dissenting opinion upon their part,—clearly it would be manifest injustice to hold a layman to be a deliberate trespasser when he acted upon the advice given him by reputable counsel that the withdrawal order was invalid.

Advice of that character, concurred in by federal judges, by many distinguished members of the bar, and by three

Justices of this Court, certainly cannot be held, in the absence of testimony to that effect, to have been lightly given or to have been rendered from improper motives; nor can it be taken, because subsequently to be found in conflict with the opinion of the majority of this court, to have been rendered without careful and thoughtful consideration of the questions involved.

(a) *That a layman acting upon such advice of counsel is not a wilful trespasser is settled law.*

"What was done was in the belief by the defendant that the lands were adjacent to the line of the road and that the cutting was legal. It was done upon the advice of counsel and the defendant used ordinary care and prudence in first being advised as to the law upon the facts as they have been agreed upon, and there was no intention on the part of the defendant to violate any law or to do any wrongful act. This, we think, clearly takes the case out of the principle of those above cited, and the measure of damages must, therefore, be the value of the timber at the time and at the place where it was cut." *United States v. St. Anthony Railway Company*, 192. U. S. 542.

In *United States v. McCutchen*, 238 Fed. 593, the Circuit Court of Appeals for the Eighth Circuit, said:

"But there can be no doubt either that in a court of equity at least, the imputation of being wilful trespassers will not be indulged in as against those who are shown to have acted in good faith in reliance upon advice of reputable counsel.

"At the time the transactions complained of were had in this case, the validity of the withdrawal order of September, 1909, had not only not been upheld, but, on the contrary, had been determined by courts

of great respectability to be without force or effect. *The President of the United States, himself a great lawyer, had indicated his doubt as to the power to make the order, and there is small wonder, therefore, that counsel eminent in their profession, should, after mature deliberation, have been led to advise clients that the order, being beyond the scope of executive function, might be disregarded. That it has since been determined beyond the shadow of a doubt, to the satisfaction of all except those who will not see, that it is and was at all times valid and efficacious, does not detract from the proposition that men who in good faith, even though erroneously, labored under the misconception of its invalidity, are not to be punished now for anything more than the actual wrong they may have wrought."*

*In United States vs. Midway Northern Oil Company, 232 Fed. 632, the court said:*

"It is true the defendants, as laymen, are presumed to have known the law, and that the withdrawal order was valid, although many of the leading members of the California bar, and five of the ten federal judges called upon to consider the question judicially, apparently did not; and even the Executive himself was in doubt as to his authority to make the order. The maxim that every man knows the law applies to defendants, but there is a marked difference between those who recklessly, or with actual intent to rob others, trespass upon their property, and those who, acting upon the advice of counsel, trespass by mistake, with no evil purpose, but with an honest belief that they have a right to do so. 'One who acts in good faith, upon the erroneous advice of reputable counsel upon questions of legal right concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with a wilful intent to

commit a wrongful act because his counsel was mistaken in his view of the law.' *U. S. v. Homestake Mining Co.*, 117 Fed. 481, 54 C. C. A. 303; *U. S. v. St. Anthony Railway Co.*, 192 U. S. 524, 24 Sup. Ct. 333, 48 L. Ed. 548; *U. S. Mullan Fuel Co. (D. C.)* 118 Fed. 663. The defendants were not wilful looters of the public domain, nor reckless trespassers thereon. They acted on the advice of reputable counsel, expended their money and labor in good faith, relying upon a law of the United States and in the honest belief that they were within their rights. They were, of course, trespassers, because they were mistaken but they should not be mulcted in damages beyond the actual loss to the government."

In *United States v. Homestake Mining Company* (C. C. A. 8th Circuit), 117 Fed. 481, the court said:

"One who acts in good faith upon the erroneous advice of reputable counsel upon questions of legal right, concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with a wilful intent to commit a wrongful act because his counsel was mistaken in his views of the law."

Such is also the jurisprudence of Louisiana wherein the land lies and the cases originated;

*Cook v. Gulf Refining Company of La.*, 135 La. 610; *McGee vs. Louisiana Lumber Company*, 123 La. 702; *Beard v. Lufriu* 46 Ann. 882.

The lawyer is not without justification in confining his consideration of the law of the United States to the Constitution and statutes of the United States. All authority that

exists in any officer of the United States comes from these. Certainly if he must go further he is warranted in limiting his investigation to the Constitution and statutes and published reports of the courts. It is conceded that no specific statute gave to the President the authority he exercised in the withdrawal orders. The Constitution contains no specific provisions suggesting the existence of such authority. It is necessary to concede that the law as to the withdrawal is as the court of last resort has declared it. But, on the other hand, it ought to be conceded that there was no promulgation of the law until it was declared by the court in the *Midwest* case. The decision of the court is not based upon any language of any statute, but upon a long series of acts by the Presidents and a long period of inactivity and acquiescence by the Congress. The absence of action by the Congress could have been and was ascertained. It was not reasonably practicable for any one not in the employment of the government to have ascertained all the facts with reference to withdrawals by the Presidents. Not until this *Midwest* case was tried were they developed and it was practicable then to develop them because the attorneys for the government were able to secure the active cooperation of the Department whose action was under inquiry. It would have been practically impossible by an attorney not connected with the government to have ascertained the facts upon which the opinion of the court is based.

As suggested by the court, the matter of government is a practical thing, and it is doubtless the case that the people of the United States have often profited by the indisposition of the Supreme Court to permit absurd and disastrous consequences from an application of principles or propositions which

appear to attorneys to have been established as the law. And doubtless it would not be difficult to see the public benefit subserved by holding valid the withdrawal order involved in the *Midwest* case. But it would appear to be sufficient to secure for the government the benefit to be properly derived from the withdrawal order without in addition taking from the citizen that which could not under any circumstances have accrued from the order. Under the judgment of the Circuit Court of Appeals a benefit is derived from a disregard and violation of the withdrawal order that could never have resulted from obedience to its terms. As a matter of fact, all the oil involved in this case would have been lost to the United States, but for the action of defendant in taking it out before it was secured by adjacent land owners. If the United States had acted as promptly as the defendant all that it could possibly have secured is that which was given by the judgment of the District Court. Assuming the validity of the order, and assuming the correctness of the government's construction of its terms, it is necessary to assume an action by the Department foolishly futile in the accomplishment of the ends supposed to justify the withdrawal.

It is suggested by the Circuit Court of Appeals that the defendants knew of the order and of the claim of the government that the withdrawal was valid. This is not denied. He knew of it just as he knew of the statute that authorized him to do that which he did. But it no more follows that the defendant was not acting in good faith than it follows that every time a federal functionary claims an authority the authority exists. From the beginning of the Government to this time the jurisdiction of this court has been exercised to restrain illegal action by persons claiming to act under the



Constitution and laws of the United States, and a very great part of the time and labor of the court has been taken in determining that powers claimed did not exist. All of the departments of the Government of the United States have limited and defined powers. The theory upon which the Government is based assumes that the constitutional provision or the constitutional statutory provision upon which a power depends must be capable of being pointed out, and that if this can not be done the conclusion is warranted that the power does not exist. It is the duty of every citizen to obey the law. It is just as definite and high a duty to resist the exertion of powers in the name of the Government when the power has not been conferred. A recent example of the dangerous inclination of persons acting in the name of the Government to assume unauthorized power, is furnished by the activities of officers purporting to act under the "Volstead Act," who violated fundamental constitutional rights to enforce the provisions of a police statute. This court, in the resulting conflict between citizens of the United States and officers of the United States, protected the citizens from the officers. Hundreds of similar cases have been determined by the courts. It is to be assumed that in many of these cases the officers were mistaken as to the laws, and acted in good faith, notwithstanding an ultimate decision against them. It should not be assumed that in all cases when citizens have resisted or disregarded acts of officers based upon claims of authority they have acted in bad faith, although an ultimate decision may be rendered against them.

It would doubtless be unwise to abrogate the legal fiction that everybody knows the law. But it is unconscionable to base upon this fiction disastrously punitive and confiscatory

consequences when a citizen exercises a right which appears to be his after getting the advice of competent attorneys licensed by the courts who make every investigation that the circumstances permit and reaches the only conclusion that could be reached upon the facts reasonably capable of development. The conclusion upon which defendant acted was that reached by four of the nine Federal judges who passed upon the *Midwest* case, and at least three of these judges retained the view that the President's action was unauthorized even after reading the very able opinion of the judge who spoke for the majority of the court, and having before them facts which could not have been fully known until they were developed in the submission of the case to the Supreme Court. As suggested it may be unwise to permit the assumption that any one is ignorant except judges of courts that are not courts of last resort, and minority members of these courts of last resort, but it is neither wise nor just to fail to distinguish between the person who wilfully violates the law and one who acting in good faith and under competent advice acts upon a mistaken assumption of his legal rights. It is in fact a distinction which is constantly made in the administration of the law. In the criminal law, the absence of the knowledge of the existence of the law is sometimes held to evidence the lack of criminal intent which is usually essential to crime. In all criminal cases it is a fact proper to be considered in fixing the punishment.

In the instant case the defendant acted in good faith under competent legal advice, given in good faith, under circumstances under which no other advice could reasonably have been given. The District Court so adjudged. There is no controversy as to the facts. The Court of Civil Appeals

apparently assumes that it is bad faith to question of the actions of an official. If defendant acted in good faith he ought not to be visited with punishment that would not be imposed even for the commission of a crime. There is no question that the United States is made completely whole by the judgment of the District Court. Indeed, assuming now the validity of the order, there is no question that the amount of the judgment is just that much more than the government would have received if the withdrawal order had been regarded. It would seem to be sufficient punishment for a valuable service to the Government that the defendant is deprived of all the fruits of his industry, without, in addition, forfeiting this service. If it be conceded that the United States should under no circumstances suffer loss on account of a mistake of law of one of her citizens, she should still not be permitted to profit at the expense of her citizens on account of the obscurity of her laws.

(b) If the court should hold that the advice of counsel given in accord with the views of three of the justices of this court was not sufficient to take the defendant out of the category of a wilful trespasser, with nothing in the record to impugn the good faith of such advice, yet even then the measure of damages could not exceed the value of the oil after deducting the cost of its production.

The property embraced in this case is in Louisiana; the suits were brought in the federal courts in Louisiana.

It has twice been held by this Court that the question of the measure of damages recoverable against a possessor in bad faith is to be determined by the federal court sitting in Louisiana, not according to the rules of common law, or of

general equity jurisprudence, but according to the civil law of Louisiana.

*Jackson v. V. S. & P. R. R. Co.*, 99 U. S. 513;  
*New Orleans vs. Christmas*, 131 U. S. 191.

Under the provisions of the Civil Code of Louisiana, it is settled that one who produces oil or gas from the land of another is liable only for the difference between the value of the mineral so produced and the cost of producing it; that is to say, less the cost of drilling, equipping and operating the wells through which such minerals are brought to the surface.

"The real value of the gas used by the plaintiffs is its value in place. But the plaintiffs was not the owner of the gas at that time, and the record does not disclose any method by which the value thereof might be arrived at. The only method for measuring such value suggested is to ascertain the value of the gas it has brought to the surface and reduced to possession, and then subtract the cost of reducing to possession."

See *Cooke v. Gulf Refining Company of Louisiana*, 135 La. 610; and the cases therein cited.

In *Martel v. Jennings-Heywood Oil Syndicate*, 114 La. 359, the court held that one who *without right and with full knowledge of plaintiff's title* drilled on plaintiff's land and produced oil was entitled to reimbursement out of the oil "of all the expenses, ordinary and incidental, incurred in producing, transporting and preserving the same, and, if sold, the additional expense of sale;" saying:

"The Civil Code declares that 'the fruits produced by the thing belong to the owner though produced by

the work and labor of a third person, on the owner's reimbursing such person his expenses.' Article 501. Laurent in discussing Code Napoleon, Article 54, corresponding to Article 501, says:

" 'This is a principle of equity which will not permit the owner to enrich himself at the expense of another, *even though he be in bad faith*. This applies to all the expenses to which the possessor has been subjected'."

Again in *Voiers v. Atkins*, 113 La. 342, after discussing the rights and liabilities of the *mala fide* possessor, the court said:

"The claim for fruits and revenues is nothing more than a claim for indemnity for loss, and naturally may be defeated by proof that, instead of a loss, there has been a gain."

"The theory is well and fully expounded in the case of *Wilson v. Benjamin*, 26 La. Ann. 588, as follows:

" 'The claim is one in damages for the wanton detention of property; and, although the trespasser is not allowed to prefer a claim for the enhanced value of the soil attributable to his improvements, yet in the admeasurement of damages to which it is subject, the benefit derived from such improvement becomes an important element. The improvements were worth \* \* \* fully the amount at which the detention of the property might be appraised.' "

There is nothing in the case of *Utah Light & Power Company v. United States*, 243 U. S. 402, to deny the application of the law of Louisiana, as was held by the Circuit Court of Appeals (Record 212). The question here involved does not concern the title of the United States nor its power of disposition.

The United States has sued as the *owner* of lands, for damages sustained through an unlawful extraction of oil by another. The federal court sitting in Louisiana is called upon to exercise its jurisdiction to award proper damages, and in the absence of legislation by Congress governing the case, it must needs apply the general principles of the Civil law, as recognized in the Louisiana statutes and jurisprudence, and which are entirely consonant with principles of natural equity.

Under the Constitution the Congress is given the power "to dispose of and make all needful rules and regulations" respecting the lands of the United States. This power is not questioned. On the contrary, it is the constitutional provision on which defendant depended in assuming that he had the right which the unrepealed statute gave him. But this right of Congress to administer the property of the United States within a state does not give it the right to change the fundamental jurisprudence of the state. And if this be not true, the fact that the United States owns land in the state does not within itself change the jurisprudence in the absence of action by Congress.

The public lands situate in the State of Louisiana were purchased by the United States. At the time of the purchase all the property within the present state, including all the lands were subject to the rules of law which obtained in that territory. The laws affecting real estate, the property rights inhering in real estate, were substantially as they are at the present time. As to the matter now under investigation there has been no change. If the United States had then or at any time since purchased land from a private individual there can be no doubt that the ownership of the Government would

have had as to ordinary matters of property right, exactly the same incidents as if it had continued in the individual. This of course would not extend to exemption from taxation and some other incidents arising from the character of our governments. To illustrate the principle we are undertaking to state—if the United States should purchase land the land would not on account of its acquisition by the Government be relieved of its servitudes. The adjacent land owner, for instance, would still have his right to a party wall.

Again, the acquisition by the Government of a tract of land would not deprive the adjoining land owner of the right to extract through his own land all the oil and gas under the Government's land if he could take it out before the Government or some other adjacent owner could reduce it to possession.

It is to be seriously doubted if these rules of local law could be changed by the United States. It would be seriously inconsistent with the theory of our government to impose upon a state rules of general jurisprudence that would be applicable to fractions of her territory and which would not be applicable to the body of her territory or to the people of the state generally. The general principles of the real estate law of a state is at least one thing which must be regarded as purely and definitely local, and it should not be lightly assumed that any court under any circumstances would apply those hazy "general principles of jurisprudence" in such a way as to make some owners of real estate have rights and obligations that are different from those of land owners generally.

But even if the United States has the right by virtue of the quoted provision or any other provision or principle of law

to give to land which it owns in Louisiana incidents which are different from those which inhere in all other lands within the state, this right has not been exercised. The legislative power is the only one which could have acted and it has not acted. It is not for the courts to express dissatisfaction with some of the principles of law that obtain in Louisiana, nor for the courts to announce that these principles are in conflict with general principles of jurisprudence, nor for courts to amend the laws of the state to consist with these assumed general principles. It is the misfortune of Louisiana that sometimes her laws are applied, or rights under her laws are adjudicated, by common law lawyers unfamiliar with, or not in sympathy with the great system of jurisprudence which constitutes the foundation of her laws. The rule of Louisiana law invoked by defendant is not in conflict with general principles of jurisprudence if principles are general principles when they govern three-fourths of the civilized people of the world.

(c) Nor is there anything in contention of the Government that the defendants should be penalized for their expense incurred in the production of the oil because of their infringement upon the policy of the Government to keep the oil in the ground as its property, for legislative disposition.

Not only did the Government *not* own the oil in the ground (Ohio Oil Company vs. Indiana, 177 U. S. 200) but as has been before pointed out, the tracts involved in these suits each are small areas surrounded by lands under private ownership. If no one had drilled the tracts, their oil would have been drained by reason of the legal drilling of such privately owned areas. Whatever the Government might succeed in recovering in these suits was saved to it by the acts of the



several defendants; for if they had not so drilled, these isolated tracts would, in the nearly nine years intervening between the withdrawal and suit, have been drained of the fluid minerals formerly underlying them. If the Government recover of the defendants the net profit made by said defendants in the extraction of oil, the Government will have made therefore a clear profit, while to refuse the allowance of the actual cost so incurred would be to penalize the defendants in an amount far exceeding any gain made by them in the operation of their mineral locations.

(d) Although the district court held the defendants in good faith, and accordingly that they were not to be penalized by confiscating their expenditures incurred in the production of the oil in controversy, yet the court fell into a peculiar error in following the master's recommendation on one particular feature of the case, as follows:

The property produced (Record, 166) in	
oil values.....	\$67,732.94
Cost of drilling operating, to be deducted..	34,067.13
<hr/>	
Or net.....	\$33,665.81

Royalties were paid to the co-defendants of the Gulf Refining Company of Louisiana in the sum of \$11,294.20; that is to say, they were delivered their royalty oil, proceeds of the sale of which amounted to that much. The Gulf Refining Company of Louisiana, therefore, received from the results of its operation, through its lease with the mineral locators, the difference between \$33,665.81 and \$11,294.20, or \$22,371.61. The master, however, recommended judgment against the Gulf Refining Company of Louisiana for the full

amount of the net results of the operation of the property, without deducting the oil accruing to its co-defendants as royalties, and then, through some process of ratiocination recommended a decree against the Gulf Refining Company of Louisiana and the royalty owners *in solido* with said company in the sum of \$11,294.20.

The result of this recommendation, affirmed by the decree of the District Court, was to condemn the Gulf Refining Company of Louisiana, not for the *remainder*, after subtracting the \$11,294.20, obtained by the royalty owners from the net result of the operations, but for the *sum* of the royalties and such net proceeds. *That Company, therefore, which had made a profit from the results of these operations of only \$22,371.61, is condemned to pay \$44,960.01. Clearly this was an error.*

For, after coming to the correct conclusions that the Government, no more than an individual, could be permitted to enrich itself at the expense of another, and that the proper measure of damage in event the location was invalid was the value of the oil less the cost of reduction to possession, a large part of the effect of such conclusion was destroyed by a decree condemning the defendant in a sum greatly in excess of the value of the oil at the well less the cost of extraction.

The test of the measure of damage in the case is, as has been before pointed out, *the loss to the Government*, consisting in the taking of the oil by the defendants. The oil taken from the underlying strata. It had to be reduced to possession to be of value, and the cost of such extraction is necessarily to be deducted from the price of the oil after extraction to ascertain its prior value in place; that is to say, its value at

the time and place where it may have been wrongfully,—though in good faith—severed from the plaintiff's land. The amount of such damage is ascertained by the master to be \$33,665.81, and yet he recommends a judgment for \$44,960.01, which the District Court approved.

We respectfully submit that this is error, and that the amount of the judgment against all defendants *in solido* cannot exceed \$33,665.81, the value of the oil produced, less the cost of extraction.

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DILLARD P. EUBANK, et al., <i>versus</i> UNITED STATES OF AMERICA	}	No. 115
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The facts and the pleadings in this case are almost identical with those in the Mason case.

Location was made on March 31, 1910 (Record, page 5). Possession was taken on April 2, 1910, a well was commenced on April 24, 1910 (Record, page 33), and completed on June 17, 1910. It was testified to by defendant, and nowhere contradicted, that this location was also made after consultation with counsel, who advised that the location could legally be made (Record, No. 117, page 96).

Thus, both as respects the good faith of the location and the non-applicability of the withdrawal of July 2, 1910, the case is the same as that of Mason.

Special Agent Neal testified (Record, No. 117, page 61), that the total amount of oil produced from the property was of a value of \$4,806.43, of which the royalty owners' portion

was \$1,001.15, making a total retained by the Gulf Refining Company of Louisiana of oil of the value of \$3,805.28, and that the cost of drilling, equipping and operating such well for the production of such oil was \$13,628.94 (Record, No. 117, page 63), an amount considerably in excess of the value of the total amount of oil produced from the property.

And yet, notwithstanding good faith, and the adjudication that the Government could not recover for value of the oil, except subject to the cost of its extraction, the recommendation of the master, followed by the decree of the court, was for judgment against the Gulf Refining Company of Louisiana and its lessors *in solido* in the sum of \$1,001.15.

The remarks made above relative to the Mason case are here applicable. The government in no event is entitled to a money judgment, since the oil was produced from the property at a cost largely in excess of the value of all of the oil after production.

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LYDIA H. McMULLEN, et al.,	}	No. 116
<i>versus</i>		
UNITED STATES OF AMERICA.		

This case differs little from the typical case, that of Mason.

The facts are that the location was made on April 2, 1910, (Record, page 7), at which time physical possession of the property was taken by fencing it in (Record, page 89); location for Well No. 1 being made during the same month of April, derrick being built and completed that month; immediately after which houses were built for the workmen and a

contract let for the drilling of a well (Record, page 90). The contract was made before the middle of June; all of the material to be furnished by the contractor (Record, page 90).

At that time the field was new; there were no roads in the vicinity of the land; the nearest wells were on the other side of the lake—in Texas (Record, page 91); and it was the 15th day of July, 1910, when actual drilling was begun on the well, page 94 (see, also, testimony of Griggs, page 104). The Woolf Drilling Company under its contract began to haul material for drilling the well prior to June 12th (Record, page 104); the condition of the roads being so bad that it took six days to haul the boiler the four miles between Oil City and the property in controversy (Record pp. 105-107). The Woolf Drilling Company was continuously at work from the time it began hauling material until the actual work of drilling was begun (Record, page 105).

Mr. Woolf testifies (Record, page 113) that during the interval of twenty or thirty days between the date of the contract and the drilling of the well his company was continuously at work, losing no time in beginning actual drilling.

Under these circumstances, the fact that the actual drilling of the well did not begin until after the second withdrawal order is of no moment; those things which were done prior to the second withdrawal order established defendants' good faith and the right to continue the work, as fully as if actual drilling had been begun, or the well had been completed, before such second withdrawal.

In *United States v. Grass Creek Oil & Gas Co.*, 236 Fed. 484, decided by the United States Circuit Court of Appeals for

the Eighth District, the land in controversy was withdrawn May 16, 1914. In July, 1913, the land had been surveyed and notices of location posted. On April 19, 1914, the locator entered into an oral contract for the lease of the land to an oil company, which took possession of the same and placed in charge a caretaker, who remained on the land as such until after May 16, 1914, the date of the withdrawal.

On May 4, 1914, the lessee ordered lumber and material to be sent to the nearest railroad station, placed workmen on the land the next day, and entered into a verbal contract with a contractor for the drilling of wells. The contractor did not ship the drilling tools until the period beginning May 19, 1914; beginning drilling operations on July 1, 1914, nearly two months after the withdrawal. The court held:

"In our opinion, when a citizen of the United States, in good faith, enters upon public land for the purpose of discovering oil or gas, takes possession of the land by placing a caretaker thereon while he is taking proper steps to obtain the material necessary for the work of constructing the camps, enters into contracts for drilling, acting as expeditiously as possible in erecting camps and preparing for drilling, spends money and enters into contracts whereby he becomes liable for sums of money to prosecute the work leading to the discovery of oil or gas, and as soon as possible, by the exercise of proper diligence, begins the work of drilling, and continues it diligently and expeditiously until oil is discovered in commercial quantities, he is within the protection of this proviso." (of the Pickett act of June 25, 1910).

Again, as said in

*United States v. N. American Oil Consolidated*,  
242 Federal Reporter, 727;

"Diligent prosecution of work leading to discovery upon a mining claim depends so largely upon the physical conditions of the locality, the nature and situation of the region, its accessibility, the magnitude of the work, the difficulty of securing material and supplies, and the like, that each case must rest largely on its own facts and circumstances, and a decision in one is but little assistance in another. Since, however, the law does not require any unusual or extraordinary effort, but only that which is usual, ordinary, and reasonable under the circumstance, I am of the opinion that the oil company was in diligent prosecution of work leading to discovery at the date of the withdrawal, within the meaning of the Pickett Act. It was when overtaken by the withdrawal, and for months before had been, in occupation of each claim, engaged in work necessary and proper in order to effect a discovery thereon, with the then present bona fide purpose of completing such work with all reasonable expedition, and was at the date of the withdrawal doing all that could be reasonably and justly expected of it under the circumstances. The law does not require a vain or useless thing to be done, and therefore the oil company was not required by the law of diligence to have installed all of its machinery or commenced drilling before its supply of water was such that it could reasonably hope to successfully continue the work. Nor was it required to make any unusual or extraordinary effort to obtain water, but only such as was reasonable under the circumstances confronting it. Its possession, the work which it had done and was then doing, were such that it would have been protected by the courts from intrusion by private parties if the order had not been made. And that, I take it, is the true test in cases of this character."

The McMullen case is, therefore, in exactly the same situation as the other cases above referred to.

As respects the money judgment, this case is exactly like that of Eubank. Following the testimony of Special Agent Neal, the master found that (Record, Mason case, page 165), *the total value of the oil taken from the property was \$47,770.81, and that the cost of its extraction was \$54,916.70.* The defendants not having made any profit by reason of such drilling, it cannot be that the Government has lost anything and, of course, it is not entitled to any money judgment.

The master, however, recommended a judgment, which was confirmed by the final decree of the district court, against the locators for the *royalties* received by them from the operation of the property. This was, for the reason above discussed, plain error, which should be reversed.

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W. H. MATTHEWS, et al.,  
*versus*  
 UNITED STATES OF AMERICA

} No. 114

This case presents the same questions relative to the main issues of the case.

Location was made and physical possession taken in April, 1910, a rig built and erected in May of that year, although actual drilling was not done until later.

Good faith in making the location is amply sustained, and nowhere contradicted (See Record, No. 117, page 92), and is supported by the concurrent findings of the Master and the District Judge.



HENRY HUNSICKER, et al.,	}	No. 104.
<i>versus</i>		
UNITED STATES OF AMERICA.		

This case presents the same issues again. The location was made (Record, page 5) on March 20, 1910, at which time physical possession was taken. Drilling began on the first well on April 10, 1910 (Record, No. 117, page 116), which well produced gas in commercial quantities, in July, 1910. The well, however, did not produce oil, but Well No. 2, drilled on the property subsequently completed, was a producer of oil.

The discovery of gas was sufficient to complete the location and the defendant in this case made his location and drilled under advice of counsel (Record, page 116); good faith of the defendants throughout being sustained by the concurrent finding of the master and the District Judge.

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E. G. PALMER, et als.,	}	No. 111.
<i>versus</i>		
UNITED STATES OF AMERICA.		

The well in this case was drilled by the Humphrey Oil & Gas Company (Record, page 47), and was subsequently sold to and operated by the Pure Oil Operating Company (Record, page 77). The latter named company had nothing to do with the drilling of the well, acquiring it after completion. Under these circumstances, it certainly cannot be held liable for the value of the oil taken before its acquisition, or without allowance for the cost of operating the well. Nothing is claimed here for the cost of drilling the well, for the company which drilled it is not represented in this suit. The cost of operation

however, cannot, under any principles of equity, be thrown upon the defendant.

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ARKANSAS NATURAL GAS CO.,  
*versus*  
 UNITED STATES OF AMERICA. } No. 112.

In this case, the circumstances are practically the same as in the McMullen case, actual drilling having been begun on July 16, 1910, resulting in the discovery of gas in commercial quantities.

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B. R. NORVELL, et al.,  
*versus*  
 UNITED STATES OF AMERICA. } No. 113.

In this case, the location was made on December 22, 1908, (Record, page 5), oil having been produced in paying quantities long prior to the second withdrawal; the testimony of Special Agent Neal showing that oil was begun to be run from the property in March, 1909. The testimony shows that this location was made upon the advice of counsel (Record, page 64 *et seq.*) that the Roosevelt withdrawal order of December 15, 1908, was without any legal force or effect as a prohibition of inception of initiation of valid rights under mineral locations. The case therefore would be exactly the same as the Mason case, were it not for the further contention, made by the United States, that the location in question was in fraud of law and that it was made by defendants, Strouck, Weaver, Smilker, Millard, Norvell, Denman and Wildenthal, as dummy locators, for the use and benefit of a concealed party, namely the Gulf Refining Company of Louisiana.

The facts are, as shown by the record, that the locations were made by the defendants in question at the suggestion of the general manager of the Gulf Refining Company of Louisiana, with the understanding that the claim was to be the absolute property of the locators, but that it should be leased to the Gulf Company.

The record shows that the locations were made, the necessary acts performed, and lease then made to the Gulf Refining Company of Louisiana, under which lease that company drilled and made discovery and extracted oil from the land.

There is nothing to substantiate the Government's claim that the locators were dummy ones nor that their act was a fraud against the government, or that the locations were made to secure title for the Gulf Refining Company of Louisiana.

But if the records had shown that the locations were made for the use and benefit of the Gulf Refining Company of Louisiana, still there would be no fraud on the government, and the locations in question would stand exactly as in other valid locations—that is to say, if there had been no withdrawal order, they could have proceeded to patent had such been desired; and in the face of the withdrawal order, if it affects the right to mineral location, the drilling and extraction of oil was in good faith, as in the case of the other locations involved in these suits.

In *McKinley v. Wheeler*, 130 U. S. 630, the court held that a corporation was competent to locate a mining claim under the public land laws of the United States, in the same manner as an individual citizen.

"There may be some questions raised as to the extent of a claim which a corporation may be permitted to locate as an original discoverer. It may perhaps be treated as one person and entitled to locate only to the extent permitted to a single individual. That question, however, is not before us and does not call for an expression of opinion."

In *United States v. Trinidad Coal & Coking Co.*, 137 U. S. 161, the court held that a corporation was "an association of persons" under the language of the mining laws and entitled to make the same kind of location as any other association.

"The words, 'association of persons' are often, and not inaptly, employed to describe a corporation. An incorporated company is an association of individuals acting as a single person, and by their corporate name. As this court has said, 'private corporations are but associations of individuals united for some common purpose, \* \* \* \* \*'"

Hence, it is settled that a corporation may make a location and in so doing act as an association under the law, under which an association of eight or more persons is entitled to locate one hundred and sixty acres of land.

In *United States v. Colorado Anthracite Co.*, 225 U. S. 225, the court held:

"There is no prohibition, express or implied, against any entry by a qualified person for the benefit of another person or association where he or it is fully qualified to make the entry in his or its own name, and is not seeking to evade the restrictions in respect of quantity."

*"A corporation is an association of persons within the meaning of the law, and therefore the company here which was a Colorado corporation, lawfully could have made the entry in question in its own name, unless it or some member of it had had the benefit of the coal land law, or was seeking, through this land and other like entries, to acquire coal land in excess of the quantity prescribed. In other words, the fact that the entry was made in the name of Stoiber for the benefit of the company does not, without more, establish that it was forbidden or fraudulent. There is no finding that the company or any member of it had the benefit of the law or was seeking to acquire more than this 160 acres. So, for aught that appears, there was no legal obstacle to the entry being made in the company's name, and the fact that it was not may have been due to matters not affecting its validity or integrity. \* \* \* \*"*

"Fraud is not presumed, and one who bases a right of defense upon it should allege and prove it."

These decisions definitely establish that the Gulf Refining Company of Louisiana, a domestic corporation, having over eight stockholders, was an "association of persons" capable of making the entry in question, and that the fact that the location was made in the name of other persons for the benefit of the company (if this fact be true) is to be taken in law as if the location had been made by the Gulf Refining Company of Louisiana, in which event it is a valid one; and if the court holds the land to have been withdrawn from such location, was initiated and perfected in good faith.

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In all the above cases, therefore, the *second* withdrawal order cuts no figure; if the locations were without legal effect

so far as affording basis of title, it was because they were cut off by the *first* withdrawal order. The rights asserted by the defendants as relate to the admeasurement of damages against them are clearly sustained by law and they are entitled in each and every case, if the Government's claim of title is to prevail, to a judgment holding them liable only for the difference between the market value of the oil and gas reduced by them to possession and disposed of, and the cost of reducing such minerals to possession. That is the only question involved in these cases in so far as the measure of recovery is concerned; and we respectfully submit that the only proper judgment therein is one holding the defendants in damages solely for the *loss* actually accrued to the Government as a result of such operations.

This is particularly apposite to the peculiar conclusions of the master, concurred in by the District Judge, in the *Norrell* case, as in some of the other cases previously considered. Special Agent Neal testified that the total value of all of the oil produced from the property in litigation was \$14,561.81 (Record, page 100), the cost of extracting which from the disputed property (Record, page 102) was \$41,524.50, or a *total net loss incurred by defendants by reason of their operations, of \$26,962.69.*

The decree therefore, awarding the Government a money judgment, was manifest error, and should be reversed in any event.

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### IN CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court of Appeals is wrong and should be reversed; and that the cases should be remanded to the district court with in-

structions to dismiss the several bills. In any event, however, it is respectfully submitted that the defendants are entitled in each case to have deducted in the ascertainment of the damages due by them to the government, the entire cost of drilling, equipping and operating the wells which produced the oil, and to the other modifications of the decree of the district court pointed out in this brief.

Respectfully,

D. EDW. GREER  
R. L. BATTS  
HAMPDEN STORY  
S. L. HEROLD  
J. A. THIGPEN  
E. P. LEE,

*Solicitors for Appellants.*

Nos. 117, 104, 111, 112, 113, 114, 115, and 116.

# Supreme Court of the United States

OCTOBER TERM, 1922.

SAM W. MASON ET AL.

v.

UNITED STATES OF AMERICA.

HENRY HUNSICKER ET AL.

v.

UNITED STATES OF AMERICA.

E. G. PALMER ET AL.

v.

UNITED STATES OF AMERICA.

ARKANSAS NATURAL GAS COMPANY ET AL.

v.

UNITED STATES OF AMERICA.

B. R. NORVELL ET AL.

v.

UNITED STATES OF AMERICA.

W. H. MATTHEWS ET AL.

v.

UNITED STATES OF AMERICA.

DILLARD P. EUBANK ET AL.

v.

UNITED STATES OF AMERICA.

LYDIA H. McMULLEN ET AL.

v.

UNITED STATES OF AMERICA.

APPEALS FROM THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE FIFTH  
CIRCUIT.

Office Supreme Court, U

FILED

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WM. R. STANSB

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## SUPPLEMENTAL BRIEF FOR APPELLANTS.

Without again dealing separately with each individual case, we desire to restate our position as to the question generally involved in all the cases with respect to the measure of recovery should the Government be successful in maintaining its position that the mining locations are invalid.

### I.

These lands are in Louisiana. The Common Law has never prevailed in that State. The basis of the law of Louisiana has always been the Civil Law. The principles of that law as found in the Civil Code and in the commentants of noted civilians have always been the substantive law of Louisiana, inhering in the titles to real estate as the most particular localizer of all subjects of state law.

This Court has consistently recognized that the question of rights of possessors in good or bad faith in respect to Louisiana land must be governed by the law of Louisiana.

99 U. S. 513, Jackson vs. V. S. & P. R. R. Co.;  
131 U. S. 191, New Orleans vs. Christmas.

#### a.

Under the laws of Louisiana, the fruits or products of the land recovered cannot be restored to the plaintiff without reimbursing the defendant the expense he has incurred in their production.

Civil Code, Article 501.

The basis of the philosophy of this article is the maxim that no one should be permitted to enrich himself at the expense of another.

114 La. 359, Martel vs. Jennings-Heyward Oil  
Syndicate.

Or, as expressed in Varlis vs. Athins, 113 La. 342, "the claim for fruits and revenues is nothing more than a claim for indemnity for loss and naturally may be defeated by proof that, instead of a loss, there has been a gain."

In both the cited cases, it was held under the principle of Article 501 that bad faith on the part of the defendant did not affect his right to reimbursement of necessary expenses, up to the value of the products realized.

In the case in 114 La. 359, the Court followed the doctrine of the corresponding Article (548) of the French Code as to which the noted Belgian Commentator Laurent says:

"This is a principle of equity which will not permit the owner to enrich himself at the expense of another even though he be in bad faith."

See also:

26 La. Ann. 588, Wilson vs. Benjamin;  
135 La. 610, Cash vs. Gulf Refining Co. of La.,  
and cases therein cited.

b.

As pointed out in our original brief, the small areas in controversy are isolated tracts in a producing oil field.

The suits were brought seven years after the original production of oil on each of the tracts.

Meanwhile the entire field was being operated; in-

cluding, of course, the lands in private ownership adjoining and surrounding the tracts in dispute.

This Court takes judicial notice of the fugitive and vagrant qualities of oil and that it may be drained from one tract by operations on adjacent lands.

155 U. S. 665 (670), *Brown vs. Spillman*;  
177 U. S. 200, *Ohio Oil Co. vs. Indiana*.

Consequently it must be conceded that, had these fields in dispute not been drilled by defendants, their oil content would nevertheless have been extracted by the perfectly lawful operations of adjoining owners.

But for the drilling complained of, the oil would have been entirely lost to the Government.

The United States now seeks to recover that oil, or its value. In such suit, good or bad faith on the part of defendant cuts no figure under the law of Louisiana:

"He to whom property is restored must refund to the person who possessed it, *even in bad faith*, all he had necessarily expended for the preservation of the property."

Louisiana Civil Code, Article 2314.  
(Italics ours.)

c.

But even in the ordinary case of compensation for improvements to land, the law of Louisiana has always recognized *degrees* of bad faith; has compensated the possessor in *legal* bad faith and has penalized only him who possessed "knavishly" or in "*moral* bad faith."

131 U. S. 191 (218) *New Orleans vs. Gaines*;  
7 Mart. (U. S.) 112-113, *Donaldson vs. Hull*;  
135 La. 610, *Cash vs. Gulf Refining Co. of La.*

This jurisprudence relates to offset for improvements to land as against damages and liability for fruits and revenues and flows from the equitable principle of the Civil Law which forbids that one should enrich himself at another's expense, though under the code the possessor in legal bad faith is not entitled to affirmative relief for his expenses. Though he have not the right to *recover* therefor, he may offset them against the benefits he has received.

But with respect to:

1. Liability for the products themselves of the thing detained;

2. Liability on restoration of property; specific codal provisions based upon settled principles of the Civil Law compel the allowance of necessary expenses, not exceeding the value of the products to be accounted for, because, under Article 501 the fruits belong to plaintiff only upon his reimbursement of the expenses of their production and because, under Article 2314, the true owner "must refund to the person who possessed it, even in bad faith, all he had necessarily expended for the preservation of the property."

## II.

But if the case were to be governed by "principles of general preponderance" utterly unknown in the substantive law of Louisiana and never the subject of any action by Congress, the result must be the same.

### a.

When the locations were made, there had been no adjudications sustaining the power of the Executive to withdraw lands from the operations of the statutory

provisions (R. S. 2319, 2329; Act of Feb. 11, 1897 [29 St. at L. 526]) declaring them "to be free and open to exploration and purchase" by any citizen.

The existence of this power which this Court five years later deduced, not from constitutional or statutory delegations of power, but from a long continued tacit acquiescence by Congress in an Executive practice, had not at the effective dates been sustained by any court.

Its existence was doubtful to the distinguished jurist who succeeded as President the author of the withdrawal order here in question; was denied by the District Court in the Midwest case, was not there passed upon by the Circuit Court of Appeals, and was vigorously denied by three of the Justices of this tribunal.

Members of the bar cannot now be censured because they entertained the opinion so vigorously expressed by the dissenting Justices in this Court, that such withdrawal was a usurpation of power and void; nor can the concurrent finding of the Master and the District Judge that all the defendants acted in good faith on the honest advice of competent lawyers be here questioned.

242 U. S. 351, *Adamson vs. Gilliland*.

The intimations of the Circuit Court of Appeals that the transaction was "colorable" rest on no evidence whatsoever and are mere insinuations.

Under such circumstances, A Court of Equity will not treat the defendants as wilful trespassers.

192 U. S. 542, *United States vs. St. Anthony Railway Co.*;

238 Fed. 593, *United States vs. McCutchen*;

232 Fed. 632, United States vs. Midway Northern Oil Co.;

117 Fed. 481, United States vs. Homestahe Mining Co.

b.

In this suit, the Government has invoked the aid of a Court of Equity. In so doing it submits itself to the application of the principles of equity jurisprudence and it becomes the duty of the Court to grant or withhold relief in respect of the pecuniary demand asserted except upon the terms which do equity and justice to the citizen.

10 Peters 596, Brent vs. Bank of Washington;  
200 U. S. 321, United States vs. Detroit Lumber Co.;

197 U. S. 204, United States vs. Stinson;  
232 Fed. 630, United States vs. Midway Northern Oil Co.; and cases therein cited.

As said by Judge Bledsoe in the similar case of United States vs. McCutchen, 238 Fed. 59:

“Plaintiff having come into a court of equity to right its wrongs, must not expect that court to award other than equitable relief—must content itself with compensatory damages and not expect to receive those of an exemplary character.”

Most respectfully we submit that the decree of the Circuit Court of Appeals entirely disregards fundamental principles in assuming a wilful trespass, in the face of the concurrent finding of the Master and the District Court (242 U. S. 357, Adamson vs. Gilliland), that defendants acted in good faith on the honest advice of competent counsel, and in awarding damages, not to make good a loss, but to penalize the de-

pendants in an accounting for the oil saved by their operations by compelling them to lose all they had expended in its saving and preservation.

Respectfully submitted,

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